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# Contents

**Federal Register**

Vol. 72, No. 195

Wednesday, October 10, 2007

## **Agriculture Department**

*See* Animal and Plant Health Inspection Service

*See* Forest Service

### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57513

## **Animal and Plant Health Inspection Service**

### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57513–57514

## **Census Bureau**

### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57519–57520

## **Centers for Disease Control and Prevention**

### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57581–57582

### Meetings:

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 57582

Elimination of Tuberculosis Advisory Council, 57582

Fetal Alcohol Syndrome and Fetal Alcohol Effect National Task Force, 57583

HIV and STD Prevention and Treatment Advisory Committee, 57583

National Institute for Occupational Safety and Health—Safety and Occupational Health Study Section, 57583–57584

## **Centers for Medicare & Medicaid Services**

### **RULES**

### Medicare:

Hospital inpatient prospective payment systems and 2008 FY rates

Correction, 57634–57738

## **Children and Families Administration**

### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57584

Grant and cooperative agreement awards:

Boys II Men Mentoring TN et al, 57584–57585

Mid Atlantic Network of Y&FS, PA et al, 57585–57586

National Runaway Switchboard, 57586

## **Coast Guard**

### **RULES**

Drawbridge operations:

Maine, 57487–57488

## **Commerce Department**

*See* Census Bureau

*See* Industry and Security Bureau

*See* National Oceanic and Atmospheric Administration

*See* Patent and Trademark Office

### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57518–57519

## **Defense Department**

### **NOTICES**

Arms sales notification; transmittal letter, etc., 57535–57539

## **Education Department**

### **NOTICES**

Grants and cooperative agreements; availability, etc.:

Innovation and improvement—

Teaching American History Program, 57540–57545

Meetings:

Institutional Quality and Integrity National Advisory Committee, 57545–57548

## **Energy Department**

*See* Federal Energy Regulatory Commission

*See* Western Area Power Administration

## **Environmental Protection Agency**

### **RULES**

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Furilazole, 57489–57492

Spinetoram, 57492–57500

Water supply:

National primary drinking water regulations—

Lead and copper; short term regulatory revisions and clarifications, 57782–57820

### **NOTICES**

Meetings:

Association of American Pesticide Control Officials/State FIFRA Issues Research and Evaluation Group, 57568

Clean Air Scientific Advisory Committee, 57568–57569

Pesticide programs:

Risk assessments—

Sodium fluoride, 57569–57571

Pesticide registration, cancellation, etc.:

Disulfoton, 57571–57572

Reports and guidance documents; availability, etc.:

Coal combustion wastes disposal in landfills and surface impoundments; data availability, 57572–57573

## **Executive Office of the President**

*See* Presidential Documents

*See* Trade Representative, Office of United States

## **Federal Aviation Administration**

### **RULES**

Jet routes, 57485–57486

VOR Federal airways, 57486

### **PROPOSED RULES**

Airworthiness directives:

Pratt & Whitney, 57502–57503

## **Federal Communications Commission**

### **NOTICES**

Committees; establishment, renewal, termination, etc.:

North American Numbering Council, 57573–57574

Debarment proceedings:

Brown, Richard E., 57574–57576

**Federal Energy Regulatory Commission****NOTICES**

Electric rate and corporate regulation combined filings, 57548–57550

Hydroelectric applications, 57550–57561

**Meetings:**

California Independent System Operator Corp., 57561  
Natural gas pipeline rate and refund report filings, 57561–57562

**Federal Reserve System****NOTICES**

Banks and bank holding companies:

Change in bank control, 57576

Formations, acquisitions, and mergers, 57576

Permissible nonbanking activities, 57576–57577

**Meetings:**

Consumer Advisory Council, 57577

Meetings; Sunshine Act, 57577

**Federal Trade Commission****NOTICES**

Premerger notification waiting periods; early terminations, 57577–57579

Prohibited trade practices:

Mylan Laboratories and E. Merck oHG, 57579–57581

**Fish and Wildlife Service****PROPOSED RULES**

Endangered and threatened species:

Critical habitat designations—

Peninsular bighorn sheep, 57740–57780

Survival enhancement permits—

New York; Karner blue butterfly; safe harbor agreement, 57511–57512

**NOTICES**

Endangered and threatened species:

Survival enhancement permits—

Stirling Management Area, CA; fisher; candidate conservation agreement, 57596–57598

**Food and Drug Administration****NOTICES**

Human drugs:

New drug applications—

Menley & James Laboratories, Inc., et al.; approval withdrawn, 57586–57587

Reports and guidance documents; availability, etc.:

Center for Devices and Radiological Health; guidance document list; Web location and public docket establishment, 57587–57588

**Forest Service****NOTICES**

Environmental statements; notice of intent:

Apache-Sitgreaves National Forests, AZ, 57514–57517

Caribou-Targhee National Forest, ID, 57518

**Health and Human Services Department**

See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

**Health Resources and Services Administration****NOTICES**

Meetings:

Organ Transplantation Advisory Committee, 57588

Organization, functions, and authority delegations:

Administrator Office et al.; order of succession, 57588–57589

**Homeland Security Department**

See Coast Guard

**Industry and Security Bureau****NOTICES**

Export privileges, actions affecting:

Aviation Services International, et al., 57520–57522

**Interior Department**

See Fish and Wildlife Service

See Land Management Bureau

See Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service****RULES**

Income taxes:

Qualified small business stock; deferral of sale gains by partnerships and their partners  
Correction, 57487

**PROPOSED RULES**

Income taxes:

Foreign corporations; gross income exclusions; cross-reference  
Hearing cancellation, 57503–57504

**International Trade Commission****NOTICES**

Import investigations:

Sucralose, sweeteners containing sucralose, and related intermediate compounds thereof, 57599

**Land Management Bureau****NOTICES**

Meetings:

Resource Advisory Councils—  
Eastern Montana, 57598

Survey plat filings:

Idaho, 57598–57599

**National Institutes of Health****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57589–57590

Meetings:

National Center for Complementary and Alternative Medicine, 57590

National Heart, Lung, and Blood Institute, 57590

National Human Genome Research Institute, 57590–57591

National Institute of Allergy and Infectious Diseases, 57593–57594

National Institute of Arthritis and Musculoskeletal and Skin Diseases, 57591

National Institute of Child Health and Human Development, 57592–57593

National Institute of Mental Health, 57591

National Institute of Neurological Disorders and Stroke, 57591–57592

National Institute on Alcohol Abuse and Alcoholism, 57592

Scientific Review Center, 57594–57595  
National Institute of Allergy and Infectious Diseases, 57595  
Organization, functions, and authority delegations:  
National Institute of Biomedical Imaging and  
Bioengineering, 57595  
Patent licenses; non-exclusive, exclusive, or partially  
exclusive:  
CC Biotech LLC, 57595–57596

### **National Oceanic and Atmospheric Administration**

#### **RULES**

Fishery conservation and management:  
Alaska; fisheries of Exclusive Economic Zone—  
Atka mackerel, 57501  
Northeastern United States fisheries—  
Summer flounder, 57500–57501

#### **NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 57522–57523  
Marine mammal permit applications, determinations, etc.,  
57523–57525  
Meetings:  
Gulf of Mexico Fishery Management Council, 57525  
New England Fishery Management Council, 57525–57526

### **National Science Foundation**

#### **NOTICES**

Meetings:  
Engineering Advisory Committee, 57599  
U.S. Chief Financial Officer Council Grants Policy  
Committee, 57599–57600

### **Nuclear Regulatory Commission**

#### **NOTICES**

Committees; establishment, renewal, termination, etc.:  
Independent External Review Panel to Identify  
Vulnerabilities in NRC's Material Licensing Program,  
57600  
Decommissioning plans; sites:  
United Nuclear Corp.-Naval Products Site, CT, 57600–  
57602  
Environmental statements; availability, etc.:  
Army Department; Armament Research, Development,  
and Engineering Center, Picatinny Arsenal, NJ,  
57602–57604  
Incyte Corp., 57604–57606  
Meetings; Sunshine Act, 57606  
Operating licenses, amendments; no significant hazards  
considerations; biweekly notices; correction, 57606

### **Office of United States Trade Representative**

See Trade Representative, Office of United States

### **Patent and Trademark Office**

#### **NOTICES**

Reports and guidance documents; availability, etc.:  
Examination guidelines for determining obviousness,  
57526–57535

### **Postal Service**

#### **RULES**

Domestic Mail Manual:  
Temporary mail forwarding policy, 57488–57489

#### **PROPOSED RULES**

Domestic Mail Manual:  
Automation, presorted, and carrier route flat-size mail;  
new address and barcode requirements, 57507–57511  
Automation, presorted, and carrier route rate letters; new  
address requirements, 57505–57506

Express Mail Corporate Accounts; local trust accounts;  
cash and check deposits elimination, 57506–57507

### **Presidential Documents**

#### **PROCLAMATIONS**

#### *Special observances:*

Fire Prevention Week (Proc. 8188), 57483–57484

### **Securities and Exchange Commission**

#### **NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 57609–57610  
Investment Advisers Act of 1940:  
Franklin Portfolio Associates, LLC, et al., 57610–57613  
IronBridge Capital Management LP et al., 57613–57615  
Meetings; Sunshine Act, 57615  
Self-regulatory organizations; proposed rule changes:  
American Stock Exchange LLC, 57615–57616  
Boston Stock Exchange, Inc., 57617–57619  
Chicago Board Options Exchange, Inc., 57619–57621  
New York Stock Exchange LLC, 57622–57625  
NYSE Arca, Inc., 57625–57629

### **Social Security Administration**

#### **NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 57629–57630

### **State Department**

#### **NOTICES**

Foreign Operations, Export Financing, and Related  
Programs Appropriations Act:  
Colombian demobilization program; determination and  
certification, 57630

### **Surface Mining Reclamation and Enforcement Office**

#### **RULES**

Permanent program and abandoned mine land reclamation  
plan submissions:  
Montana, 57822–57838

#### **PROPOSED RULES**

Surface and underground coal mining activities:  
Excess spoil and coal mine waste minimization and  
stream buffer zones for U.S. waters—  
Public hearings, 57504–57505

### **Surface Transportation Board**

#### **NOTICES**

Railroad services abandonment:  
Bessemer & Lake Erie Railroad Co., 57631–57632

### **Trade Representative, Office of United States**

#### **NOTICES**

World Trade Organization:  
Dispute settlement panel proceedings—  
China; coated free sheet paper; antidumping and  
countervailing duty measures, 57607  
China; intellectual property rights; protection and  
enforcement measures, 57608–57609

### **Transportation Department**

See Federal Aviation Administration

See Surface Transportation Board

#### **NOTICES**

Agency information collection activities; proposals,  
submissions, and approvals, 57630–57631  
Aviation proceedings:  
Agreements filed; weekly receipts, 57631

Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 57631

**Treasury Department**

See Internal Revenue Service

**Western Area Power Administration**

**NOTICES**

Power rates:

Pacific Northwest-Pacific Southwest Intertie Project,  
57563–57568

---

**Separate Parts In This Issue**

**Part II**

Health and Human Services Department, Centers for Medicare & Medicaid Services, 57634–57738

**Part III**

Interior Department, Fish and Wildlife Service, 57740–57780

**Part IV**

Environmental Protection Agency, 57782–57820

**Part V**

Interior Department, Surface Mining Reclamation and Enforcement Office, 57822–57838

---

**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.

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**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.

**3 CFR****Proclamations:**

8188.....57483

**14 CFR**71 (2 documents) .....57485,  
57486**Proposed Rules:**

39.....57502

**26 CFR**

1.....57487

**Proposed Rules:**

1.....57503

**30 CFR**

926.....57822

**Proposed Rules:**

780.....57504

784.....57504

816.....57504

817.....57504

**33 CFR**

117.....57487

**39 CFR**

111.....57488

**Proposed Rules:**111 (3 documents) .....57505,  
57506, 57507**40 CFR**

141.....57782

142.....57782

180 (2 documents) .....57489,  
57492**42 CFR**

411.....57634

412.....57634

413.....57634

489.....57634

**50 CFR**

648.....57500

679.....57501

**Proposed Rules:**17 (2 documents) .....57511,  
57740

---

# Presidential Documents

---

Title 3—

Proclamation 8188 of October 4, 2007

The President

Fire Prevention Week, 2007

By the President of the United States of America

## A Proclamation

During Fire Prevention Week, we reaffirm our commitment to raising awareness about fire safety and prevention, and we salute our country's firefighters who perform heroic acts to keep their fellow citizens safe.

Fires injure or kill thousands of people each year. Americans can help reduce the devastating effects of fires with careful planning and by installing smoke alarms and fire extinguishers in their homes and workplaces. This year's theme, "Practice Your Escape Plan," highlights the importance of creating a fire escape plan and knowing the routes to quickly exit a burning building. By taking these special precautions, lives can be saved.

America's firefighters demonstrate the true meaning of heroism by taking great risks to safeguard our communities. During Fire Prevention Week, we honor our selfless firefighters and underscore the importance of fire safety. We also pay special tribute to those who have fallen in the line of duty. Our country is grateful for their service and sacrifice, and we pray for God's comfort and strength for their loved ones.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 7 through October 13, 2007, as Fire Prevention Week. On Sunday, October 7, 2007, in accordance with Public Law 107-51, the flag of the United States will be flown at half staff on all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I call on all Americans to participate in this observance through appropriate programs and activities and by renewing their efforts to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

A handwritten signature in black ink, appearing to be "George W. Bush", written in a cursive style.

[FR Doc. 07-5020  
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Billing code 3195-01-P

# Rules and Regulations

Federal Register

Vol. 72, No. 195

Wednesday, October 10, 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.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2007-28134; Airspace Docket No. 07-ASW-1]

RIN 2120-AA66

#### Revision of Jet Routes J-29 and J-101; South Central United States

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises Jet Routes J-29 and J-101 over the South Central United States in support of the Houston Area Air Traffic System Project. This allows for more effective utilization of airspace and enhances the management of aircraft operations over the Houston terminal area.

**DATES:** *Effective Date:* 0901 UTC, April 10, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

#### History

On June 7, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to revise J-29 between the Humble, TX, VORTAC and the El Dorado, AR, VORTAC, and revise J-101 between the Lufkin, TX, VORTAC and Little Rock, AR, VORTAC (72 FR 31477). Interested parties were invited to participate in this rulemaking

effort by submitting written comments on the proposal. No comments were received in response to the proposal. With the exception of editorial changes, this amendment is the same as that proposed in the NPRM.

#### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising J-29 and J-101 over the South Central United States. Specifically, this action revises J-29 between the Humble, TX, VORTAC and the El Dorado, AR, VORTAC, and revises J-101 between the Lufkin, TX, VORTAC and Little Rock, AR, VORTAC. This action allows for more effective utilization of airspace and enhances the management of aircraft operations over the Houston terminal area.

Jet routes are published in paragraph 2004 of FAA Order 7400.9R, signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Jet routes listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revises Jet Routes J-29 and J-101 in the South Central United States.

#### Environmental Review

The FAA has reviewed the above referenced action and determined that it is categorically excluded from further environmental documentation according to FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, in accordance with paragraphs 311a. Additionally, the implementation of this action will not result in any extraordinary circumstances in accordance with FAA Order 1050.1E paragraph 304.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 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 FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

*Paragraph 2004—Jet Routes.*

\* \* \* \* \*

#### J-29 [Revised]

From the INT of the United States/Mexican Border and the Corpus Christi, TX, 229° radial via Corpus Christi; Palacios, TX; Humble, TX; El Dorado, AR; Memphis, TN; Pocket City, IN; INT Pocket City 051° and Rosewood, OH, 230° radials; Rosewood; DRYER, OH; Jamestown, NY; Syracuse, NY; Plattsburgh, NY; Bangor, ME; to Halifax, Canada; excluding the portions within Mexico and Canada.

\* \* \* \* \*

#### J-101 [Revised]

From Humble, TX, Lufkin, TX; Little Rock, AR; St. Louis, MO; Spinner, IL; Pontiac, IL; Joliet, IL; Northbrook, IL; Badger, WI; Green Bay, WI; to Sault Ste Marie, MI.

\* \* \* \* \*

Issued in Washington, DC, on September 27, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7-19742 Filed 10-9-07; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2006-24926; Airspace Docket No. 06-ASW-1]

RIN 2120-AA66

**Establishment, Modification and Revocation of VOR Federal Airways; East Central United States**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies VOR Federal Airway, V-133 over the East Central United States in support of the Midwest Airspace Enhancement Plan (MASE). The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace assigned to the Chicago, Cleveland, and Indianapolis Air Route Traffic Control Centers (ARTCC).

**DATES:** *Effective Date:* 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Steve Rohring, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

**SUPPLEMENTARY INFORMATION:**

**History**

On June 15, 2007, the FAA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) (72 FR 33168) to modify the description for V-133 published in a notice of proposed rulemaking (NPRM) issued on June 16, 2006 (71 FR 34854). In a final rule published in the **Federal Register**, January 18, 2007 (72 FR 2182), V-133 was deferred because the suggested routing proposed in the NPRM did not pass flight check. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received objecting to the proposal.

VOR Federal Airways are published in paragraph 6010 of FAA Order 7400.9R dated August 15, 2006 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airway listed in this document will be published subsequently in that Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to modify V-133 over the East Central United States. This action enhances safety and facilitates the more flexible and efficient use of the navigable airspace. Further, this action enhances the management of aircraft operations within the Chicago, Cleveland, and Indianapolis ARTCCs' areas of responsibility.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies VOR Federal Airway V-133 in the Eastern Central United States.

**Environmental Review**

The FAA has reviewed the above referenced proposed action and determined it is categorically excluded from further environmental documentation according to FAA Order

1050.1E, Environmental Impacts: Policies and Procedures, in accordance with paragraphs 311a. Additionally, the implementation of this action will not result in any extraordinary circumstances in accordance with FAA Order 1050.1E, paragraph 304.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 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 FAA Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

*Paragraph 6010—VOR Federal Airways.*

\* \* \* \* \*

**V-133 [Revised]**

From INT Charlotte, NC, 305° and Barretts Mountain, NC, 197° radials; Barrets Mountain; Charleston, WV; Zanesville, OH; Tiverton, OH; Mansfield, OH; Sandusky, OH; INT Sandusky 342° and Detroit, MI 138° radials; Detroit; Salem, MI; INT Salem 346° and Saginaw, MI 160° radials; Saginaw; Traverse City, MI; Escanaba, MI; Sawyer, MI; Houghton, MI; Thunder Bay, ON, Canada; International Falls, MN; to Red Lake, ON, Canada. The airspace within Canada is excluded.

\* \* \* \* \*

Issued in Washington, DC, on September 27, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7-19745 Filed 10-9-07; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9353]

RIN 1545-BC67

**Section 1045 Application to Partnerships; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final regulations (TD 9353) that were published in the **Federal Register** on Tuesday, August 14, 2007 (72 FR 45346) relating to the application of section 1045 of the Internal Revenue Code to partnerships and their partners.

**DATES:** This correction is effective October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jian H. Grant at (202) 622-3050 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction are under section 1045 of the Internal Revenue Code.

**Need for Correction**

As published, final regulations (TD 9353) contain errors that may prove to be misleading and are in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following amendments:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.1045-1 is amended by revising the last sentence of paragraph (c)(1)(i), the subtitle of paragraph (c)(2)(i), the first five sentences of paragraph (h)(3)(i) *Example 3.(i)*, the fourth sentence of (h)(3)(i) *Example 5.(v)*, and the first sentence of (h)(3)(i) *Example 12.(ii)* to read as follows:

**§ 1.1045-1 Application to partnerships.**

\* \* \* \* \*

(c) \* \* \*  
 (1) \* \* \*  
 (i) \* \* \* A taxpayer other than a C corporation that sells QSB stock held for more than 6 months at the time of the sale may elect in accordance with paragraph (h) of this section to apply section 1045 if replacement QSB stock is purchased by a purchasing partnership (including a selling partnership).

\* \* \* \* \*

(2) \* \* \*  
 (i) *General rule.*

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(i) \* \* \*

*Example 3.* \* \* \*

(i) On January 1, 2008, A, an individual, and B, an individual, each contribute \$500 to UTP (upper-tier partnership) for equal partnership interests. On February 1, 2008, UTP and C, an individual, each contribute \$1,000 to LTP (lower-tier partnership) for equal partnership interests. On March 1, 2008, LTP purchases QSB stock for \$500. On April 1, 2008, D, an individual, joins UTP by contributing \$500 to UTP for a 1/3 interest in UTP. On December 1, 2008, LTP sells the QSB stock for \$2,000. \* \* \*

\* \* \* \* \*

*Example 5.* \* \* \*

(v) \* \* \* In accordance with the principles of § 1.743-1(j)(3), the amount of A's gain from the March 30, 2009, sale of replacement QSB1 stock in which A has a \$200 negative basis adjustment equals \$300 (A's share of PRS' gain from the sale of replacement QSB1 stock (\$100), increased by the amount of A's negative basis adjustment for replacement QSB1 stock (\$200)). \* \* \*

\* \* \* \* \*

*Example 12.* \* \* \*

(ii) Because A purchased within 60 days of PRS' sale of the QSB stock, replacement QSB stock for a cost equal to A's share of the partnership's amount realized on the sale of the QSB stock, and because A made a valid election to apply section 1045 with respect to A's share of the gain from PRS' sale of the QSB stock, A does not recognize A's \$100 distributive share of the gain from PRS' sale of the QSB stock. \* \* \*

\* \* \* \* \*

**LaNita Van Dyke,**  
*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7-19869 Filed 10-9-07; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD01-07-136]

**Drawbridge Operation Regulations; Kennebec River, Bath and Woolwich, ME**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Carlton Bridge across the Kennebec River at mile 14.0, between Bath and Woolwich, Maine. Under this temporary deviation the Carlton Bridge may remain in the closed position from 6:30 a.m. to 6:30 p.m. for seven days; October 1, 2, 8, 9, 15, 16, and 22, 2007, to facilitate bridge painting operations. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate bridge painting.

**DATES:** This deviation is effective from October 1, 2007 through October 22, 2007.

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

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

**SUPPLEMENTARY INFORMATION:** The Carlton Bridge, across the Kennebec River, mile 14.0, between Bath and Woolwich, Maine, has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.525.

The owner of the bridge, Maine Department of Transportation, requested a temporary deviation to facilitate bridge painting operations at the Carlton Bridge.

The bridge painting will be performed on the lift span end sections which requires the lift span to be raised up 6 feet and locked in that position in order

to install paint containment, sandblast the metal, and paint the bridge span ends.

This work must be performed before the ambient air temperature becomes too cold for outdoor painting.

Historically, there were thirteen requests to open the Carlton Bridge in September 2006, and eleven requests to open in October 2006. Those totals were for the entire month.

The requested bridge closure dates to complete the bridge painting at the bridge for 2007, will all be on Monday and Tuesday when recreational boating activity is very low.

Under this temporary deviation the Carlton Bridge need not open for the passage of vessel traffic between 6:30 a.m. and 6:30 p.m.; October 1, 2, 8, 9, 15, 16, and 22, 2007. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operation schedule.

Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: September 28, 2007.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. 07-4998 Filed 10-4-07; 3:08 pm]

**BILLING CODE 4910-15-P**

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## POSTAL SERVICE

### 39 CFR Part 111

#### Temporary Mail Forwarding Policy

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service published an interim rule and request for comment on amendments to the standards in the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) concerning temporary change of address orders. The Postal Service is adopting the interim rule with clarifying revisions.

**DATES:** *Effective Date:* October 10, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Charles B. Hunt, Product Management, (901) 681-4651, James Wilson, Address Management, (901) 681-4676.

**SUPPLEMENTARY INFORMATION:** On July 7, 2006, the Postal Service published an interim final rule in the **Federal Register** revising the DMM standards concerning the duration and submission of change of address orders. 71 FR 38537. The notice also invited public comment concerning the changes. The Postal Service received five customer comments on the revisions.

Four of the comments oppose the establishment of a six month limit on the duration of the initial temporary change-of-address order, stating their preference for a longer period such as seven or eight months if not the current period of up to one year. Some commenters appeared to misunderstand the new rule, believing that it reduces the amount of time for temporary change-of-address service from one year to six months. Others, not appearing to have this misunderstanding, based their comments on the inconvenience of submitting a second temporary change order.

As explained in the interim rule, the change does not reduce the maximum time for which customers can obtain temporary change-of-address service, which remains up to one year. The change only requires customers to submit a second request if they need the service for more than six months. Since the majority (approximately 62 percent) of all temporary change-of-address requests are for less than six months, most requests will not be affected by the new policy. We realize that some customers may be inconvenienced by the requirement to submit a second request to extend their forwarding order. However, we will minimize the inconvenience by sending customers a reminder to submit a second temporary forwarding request if they desire additional forwarding time. We believe that limiting initial requests to six months will benefit customers who inadvertently fail to state an ending date on a temporary change of address order.

Two commenters opposed extending the minimum duration of temporary change of address orders. One suggested that service be provided for shorter time periods for a fee, while the other suggested customers be required to submit the requests far enough in advance to permit them to be processed in time in order to be applied to the shorter period.

As explained in the interim rule, the time needed to process and redirect the mail of temporary change-of-address

orders may approach two weeks. Accordingly, the acceptance of short-term forwarding orders results in instances where mail does not arrive prior to the date the customer leaves the temporary address. This mail must be redirected again to the permanent address, resulting in additional handling by the Postal Service and delay in receipt of mail for the customer. The imposition of a fee for short-term temporary change-of-address service would not alter this pattern. Furthermore, while the Postal Service encourages customers to file change-of-address orders in advance of their move, it cannot, as a practical matter, require customers to submit them by a specific date since circumstances may require temporary moves on the part of a customer with little advance notice.

Accordingly, for the reasons explained here as well as in the interim rule, the Postal Service adopts the interim rule as a final rule with the additional changes discussed below. These changes are based on review of the comments and further internal consideration of the standards.

The additional changes to DMM 507.2.1.3 adopted in this final rule are intended to clarify the time periods for temporary change of address orders. That is, the revisions provide more precise information for customers by also expressing the periods in days. Accordingly, the changes state the minimum duration for a change of address order is 15 days; the maximum duration for the initial change of address order is 185 days; and the maximum duration for the additional change of address order is 179 days. A customer seeking the longest duration for temporary change of address, can accordingly submit an initial order for 185 days and a second order for 179 more days, thus reaching the maximum period of 364 days.

The Postal Service adopts the following revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1, 111.4.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

#### PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)* set forth below:

**500 Additional Mailing Services**

\* \* \* \* \*

**507 Mailer Services**

\* \* \* \* \*

**2.0 Forwarding**

**2.1 Change-of-Address Order**

\* \* \* \* \*

**2.1.3 Temporary Forwarding**

*[Revise paragraph in 2.1.3 as follows:]*

A customer temporarily moving away may have mail forwarded for a specific period of time, not to exceed 12 months (364 total consecutive days). The Postal Service provides temporary forwarding service for a period of two weeks to six months (15 to 185 days) in response to an initial temporary change-of-address order. Customers may extend the temporary forwarding period up to a maximum of 12 months (364 days), by filing a second change-of-address order to begin on the first day of the second six-month period (the 186th day) and expiring on the desired date, up to and including the last day of the second six-month period (364th day). Every temporary change-of-address order must specify both beginning and end dates.

\* \* \* \* \*

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

**Neva Watson,**

*Attorney, Legislation.*

[FR Doc. E7-19875 Filed 10-9-07; 8:45 am]

BILLING CODE 7710-12-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2007-0557; FRL-8145-2]

**Furilazole; Inert Ingredient Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of furilazole (3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethylloxazolidine; (CAS Reg. No. 121776-33-8) under 40 CFR 180.471 when used as a pesticide inert ingredient safener on the sorghum commodities forage, grain, and stover at 0.01 parts per million (ppm). The Monsanto Company 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.

**DATES:** This regulation is effective October 10, 2007. Objections and requests for hearings must be received on or before December 10, 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-2007-0557. 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 [www.regulations.gov](http://www.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 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:** Karen Angulo, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: [angulo.karen@epa.gov](mailto:angulo.karen@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-2007-0557 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 December 10, 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-2007-0557, 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

In the *Federal Register* of June 1, 2005 (70 FR 31459) (FRL-7715-7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA), announcing the filing of a pesticide petition (PP 5E6919) by the Monsanto Company. The petition requested that 40 CFR 180.471 be amended by the addition of tolerances for residues of furilazole (3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethylloxazolidine; (CAS Reg. No. 121776-33-8) on the sorghum commodities bran, flour, forage, grain, and stover at 0.01 parts per million (ppm). That notice included a summary of the petition prepared by the petitioner. No comments were received in response to the notice of filing.

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(c)(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.

## 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 furilazole is discussed in this unit. EPA has sufficient data to assess the hazards of and make a determination on aggregate exposure for the chemical. The following provides a brief summary of the risk assessment and conclusions for the Agency's review of furilazole. 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-2007-0557.

### A. Human Health

The Agency reviewed the available information on furilazole submitted by the petitioner and determined that the toxicity database is sufficient. The toxicity studies used here were submitted for the establishment of tolerances of furilazole on corn commodities (*Federal Register* of April 3, 2002 (67 FR 15727) (FRL-6828-4). Laboratory studies in rodents show that exposure to furilazole may cause effects to the liver. In a 90-day oral toxicity study on rodents, the no observed effects level (NOAEL) was 7 milligrams/kilograms/day (mg/kg/day) and the lowest observed effects level (LOAEL) was 34/38 mg/kg/day (male/female), and in a chronic toxicity study on the rat the NOAEL was 0.26 mg/kg/day and the LOAEL was 5.05 mg/kg/day. Evidence of carcinogenicity was observed in rodents. For developmental toxicity, effects (increased number of resorptions; NOAEL was 10 mg/kg/day and the LOAEL was 75 mg/kg/day) were observed at maternally toxic doses. In the final rule, the Agency concluded "no qualitative or quantitative evidence of increased susceptibility in the rat or rabbit fetuses following *in-utero* exposure in the developmental toxicity studies nor to the offspring following

prenatal/postnatal exposure in the 2-generation reproduction study." The Agency further concluded "taking into account the lack of increased susceptibility and the completeness of the data on toxicity and exposure, EPA determined that the 10X safety factor to protect infants and children should be removed." There are no residual uncertainties regarding prenatal and/or postnatal toxicity.

### B. Exposure Assessment

The potential for exposure to residues of furilazole is adequately characterized based on the results of modeling and the crop residue studies. The results of the Dietary Exposure Evaluation Model (DEEM) model developed when tolerances for furilazole were first established on corn estimated that the amount of the dietary chronic population adjusted dose (cPAD) for the U.S. population was 1.4%, and the highest amount of the cPAD was 3.4% for all infants less than 1 year old. Estimates for potential cancer risks were also very low.

Residue studies (crop field trials and processed) show that residues of furilazole on sorghum commodities were non-quantifiable (less than the Limit of Quantitation (LOQ) of 0.010 ppm) in all samples of sorghum forage, grain, and stover.

Considering the results of the residue studies for furilazole on sorghum commodities and exposure modeling, the Agency concludes that dietary (food and drinking water) exposures of concern are not anticipated from the inert ingredient use of furilazole on the sorghum commodities forage, grain, and stover. Residential exposure is not expected because applications are limited to the agricultural crop sorghum. EPA is not aware of non-pesticide uses of furilazole, therefore, no further aggregate assessment is necessary.

### 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 margin of exposure 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 furilazole and

potential exposure is adequately characterized based on results of the residue studies for furilazole on sorghum commodities and exposure modeling. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity. Taking into account the lack of increased susceptibility and the completeness of the data on toxicity and exposure, EPA determined that the 10X safety factor to protect infants and children should be removed.

#### 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 furilazole 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 furilazole 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 (capillary gas chromatography using electron capture detection) is available to enforce the tolerance exemption 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](mailto:residuemethods@epa.gov).

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

#### F. Determination of Safety and Conclusions

The petitioner requested tolerances for sorghum flour and bran, nevertheless, these tolerances are not being established. The Agency has determined that tolerances for these

processed commodities are not necessary because the residue data showed that residues of furilazole were non-quantifiable (less than 0.010 ppm) in all samples of grain (RAC) and processed fractions.

Laboratory studies in show that exposure to furilazole may cause effects to the liver and evidence of carcinogenicity was observed. Developmental effects were observed at maternally toxic doses and there was no qualitative or quantitative evidence of increased susceptibility in the rat or rabbit fetuses. Therefore, the 10X safety factor to protect infants and children is removed.

The results of the DEEM model that was developed when tolerances for furilazole were first established estimated the amount of the dietary cPAD for the U.S. population was 1.4%, and the highest amount of the cPAD was 3.4% for all infants less than 1 year old. Estimates for potential cancer risks were also very low. Residue studies (crop field trials and processed) on sorghum commodities show that residues of furilazole were non-quantifiable (less than the LOQ of 0.010 ppm). Considering the results of the residue studies and the conservative exposure modeling, the Agency concludes that dietary (food and drinking water) exposures of concern are not anticipated from the inert ingredient use of furilazole on sorghum commodities. Residential exposure is not expected because applications are limited to the agricultural crop sorghum. The Agency is not aware of any non-pesticide uses of furilazole, therefore, no further exposure assessment is necessary.

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 furilazole. Accordingly, EPA finds that establishing tolerances for furilazole will be safe. EPA is establishing tolerances under 40 CFR 180.471 for residues of furilazole in or on the sorghum commodities forage, grain, and stover at 0.01 ppm when it is used as an inert ingredient safener.

In addition, the annual application rate limitation found in 40 CFR 180.471 is being removed because it is unnecessary. The establishment of tolerance levels provides adequate regulation under FFDCA.

#### IV. 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 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).

**V. 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: September 27, 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. In §180.471, paragraph (a) is amended by revising the introductory text and by alphabetically adding commodities to the table to read as follows:

**§ 180.471 Furilazole; tolerances for residues.**

(a) *General.* Tolerances are established for residues of furilazole; 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethylloxazolidine (CAS Reg. No. 121776-33-8) when used as an inert ingredient (safener) in pesticide formulations in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * *	*
Sorghum, forage .....	0.01
Sorghum, grain .....	0.01
Sorghum, stover .....	0.01

\* \* \* \* \*

[FR Doc. E7-19829 Filed 10-9-07; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2007-0876; FRL-8149-9]

**Spinetoram; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for the combined residues of the insecticide spinetoram, in or on acerola; almond, hulls; amaranth grain, grain; apple, wet pomace; artichoke, globe; asparagus; atemoya; avocado; banana; beet, sugar, molasses; biriba; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; bushberry, subgroup 13B; caneberry, subgroup 13A; canistel; cattle, fat; cattle, liver; cattle, meat; cattle, meat byproducts (except liver); cherimoya; citrus, dried pulp; citrus, oil; corn, sweet, kernel plus cob with husks removed; cotton, gin byproducts; cotton, undelinted seed; cranberry; custard apple; egg; feijoa; fig; fruit, citrus, group 10; fruit, pome, group 11; fruit, stone, group 12; goat, fat; goat, liver; goat, meat; goat, meat byproducts (except liver); grain, aspirated fractions; grain, cereal, group 15, except rice, sorghum, pearl millet and proso millet; grain, cereal, group 16, forage; grain, cereal, group 16, hay; grain, cereal, group 16, stover; grain, cereal, straw, group 16, except rice; grape; grape, raisin; guava; herb, dried, subgroup 19A; herb, fresh, subgroup 19A; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, liver; horse, meat; horse, meat byproducts (except liver); llama; jaboticaba; juneberry; lingonberry; longan; lychee; mango; milk; milk, fat; millet, pearl, grain; millet, proso, grain; nut, tree, group 14; okra; onion, green; papaya; passionfruit; pea and bean, dried shelled, except soybean, subgroup 6C; pea and bean, succulent shelled, subgroup 6B; peanut; peanut, hay; peppermint, tops; pistachio; poultry, fat; poultry, meat; poultry, meat byproducts; pulasan; rambutan; salal; sapodilla; sapote, black; sapote, mamey; sapote, white; sheep, fat; sheep, liver; sheep, meat; sheep, meat byproducts (except liver); sorghum, grain, grain; soursop; soybean, seed; spanish lime; spearmint, tops; star apple; star fruit; strawberry; sugar apple; ti, leaves; vegetable, bulb, group 3, except green onion; vegetable, cucurbit, group 9; vegetable, foliage of legume, group 7; vegetable, fruiting, group 8; vegetable, leafy, except brassica, group 4; vegetable, leaves of root and tuber, group 2; vegetable,

legume, edible podded, subgroup 6A; vegetable, root and tuber, group 1; watercress; and wax jambu. Dow AgroSciences, LLC requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective October 10, 2007. Objections and requests for hearings must be received on or before December 10, 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-2007-0876. 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. 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 Room S-4400, One Potomac Yard (South Bldg.), 2777 South Crystal Dr., Arlington, VA 22202-3503. 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:** Bonaventure Akinlosotu, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; telephone number: (703) 605-0653; e-mail address: [akinlosotu.bonaventure@epa.gov](mailto:akinlosotu.bonaventure@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 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-2007-0876 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 December 10, 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-2007-0876, 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 Avenue, NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Room S-4400, One Potomac Yard (South Bldg.), 2777 South Crystal Dr., Arlington, VA 22202-4503. 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 August 22, 2007 (72 FR 47008) (FRL-8154-1), 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 5F7006) by Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268-1053. The petition requested the establishment of a tolerance for the combined residues of the insecticide XDE-175, expressed as a combination of XDE-175-J: 1-H-as-Indaceno[3,2-d]o oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-Lmannopyranosyl)oxy]-13-[[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro-14-methyl-, (2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR) and XDE-175-L: 1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-Lmannopyranosyl)oxy]-13-[[[(2R,5S,6R)-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-4,14-dimethyl-, (2S,3aR,5aS,5bS,9S,13S,14R,16aS,16bS), in or on acerola at 1.5 parts per million (ppm); almond, hulls at 2 ppm; amaranth grain, grain at 1 ppm; apple pomace at 0.5 ppm; artichoke, globe at 0.3 ppm; asparagus at 0.2 ppm; atemoya

at 0.3 ppm; avocado at 0.3 ppm; banana at 0.25 ppm; barley, hay and straw at 5 ppm; beet, sugar, molasses at 0.75 ppm; biriba at 0.3 ppm; brassica, head and stem, subgroup 5A at 2 ppm; bushberry, subgroup 13B at 0.25 ppm; caneberry, subgroup 13A at 0.7 ppm; canistel at 0.3 ppm; cattle, fat at 2 ppm; cattle, meat byproducts at 1 ppm; cattle, meat at 0.1 ppm; cherimoya at 0.3 ppm; citrus, dried pulp at 0.5 ppm; citrus, oil at 3 ppm; coriander, leaves at 8 ppm; corn, forage at 1.5 ppm; corn, hay at 1 ppm; corn, stover at 5 ppm; corn, straw at 1 ppm; corn, sweet, forage at 1.5 ppm; corn, sweet, kernel plus cob with husks removed at 0.02 ppm; corn, sweet, stover at 5 ppm; cotton, gin byproducts at 1.5 ppm; cotton, undelinted seed at 0.02 ppm; cranberry at 0.01 ppm; custard apple at 0.3 ppm; egg at 0.02 ppm; feijoa at 0.05 ppm; fig at 0.1 ppm; fruit, citrus, group 10 at 0.3 ppm; fruit, pome, group 11 at 0.3 ppm; fruit, stone, group 12 at 0.2 ppm; goat, fat at 2 ppm; goat, meat byproducts at 1 ppm; goat, meat at 0.1 ppm; grain, aspirated fractions at 5 ppm; grain, cereal, group 15 (except rice) at 0.02 ppm; grape at 0.5 ppm; grape, raisin at 0.7 ppm; guava at 0.3 ppm; herb, dried, subgroup at 22 ppm; herb, fresh, subgroup at 3 ppm; hog, fat at 1 ppm; hog, meat byproducts at 0.5 ppm; hog, meat at 0.1 ppm; horse, fat at 2 ppm; horse, meat byproducts at 1 ppm; horse, meat at 0.1 ppm; ilama at 0.3 ppm; jaboticaba at 0.3 ppm; juneberry at 0.25 ppm; leafy vegetables (except brassica vegetables group) at 8 ppm; legume vegetables, dried shelled pea and bean (crop subgroup 6C) at 0.02 ppm; legume vegetables, edible podded (crop subgroup 6A) at 0.3 ppm; legume vegetables, succulent shelled pea and bean (crop subgroup 6B) at 0.02 ppm; lingonberry at 0.25 ppm; longan at 0.3 ppm; lychee at 0.3 ppm; mango at 0.3 ppm; milk at 0.5 ppm; milk, fat at 1 ppm; millet, forage at 1.5 ppm; millet, hay and straw at 5 ppm; nut, tree, group 14 at 0.02 ppm; oat, forage at 1.5 ppm; oat, hay and straw at 5 ppm; okra at 0.4 ppm; onion, dry bulb at 0.1 ppm; onion, green at 2 ppm; papaya at 0.3 ppm; passionfruit at 0.3 ppm; peanut at 0.02 ppm; peanut, hay at 11 ppm; peppermint, tops at 3.5 ppm; pistachio at 0.02 ppm; plantain at 0.25 ppm; poultry, fat at 0.1 ppm; poultry, meat byproducts at 0.02 ppm; poultry, meat at 0.02 ppm; pulasan at 0.3 ppm; rambutan at 0.3 ppm; rye, forage at 1.5 ppm; rye, straw at 5 ppm; salal at 0.25 ppm; sapodilla at 0.3 ppm; sapote, black at 0.3 ppm; sapote, mamey at 0.3 ppm; sapote, white at 0.3 ppm; sheep, fat at 2 ppm; sheep, meat byproducts at 1 ppm; sheep, meat at 0.1 ppm; sorghum,

forage at 1.5 ppm; sorghum, hay at 5 ppm; sorghum, stover at 5 ppm; soursop at 0.3 ppm; soybean at 0.02 ppm; spanish lime at 0.3 ppm; spearmint, tops at 3.5 ppm; star apple at 0.3 ppm; star fruit at 0.3 ppm; strawberry at 1 ppm; sugar apple at 0.3 ppm; teosinte, forage at 1.5 ppm; ti, leaves at 10 ppm; triticale, forage at 1.5 ppm; triticale, hay at 5 ppm; vegetable, brassica, leafy, group 5 at 10 ppm; vegetable, bulb, group 3 (except green onion) at 0.1 ppm; vegetable, cucurbit (cucumber, melon, squashes), group 9 at 0.3 ppm; vegetable, foliage of legume, group 7 at 8 ppm; vegetable, fruiting, group 8 at 0.4 ppm; vegetable, leaves of root and tuber, group 2 at 10 ppm; vegetable, root and tuber, group 1 at 0.1 ppm; watercress at 8 ppm; wax jambu at 0.3 ppm; wheat, forage at 1.5 ppm; and wheat, hay and straw at 5 ppm. 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.

Based upon EPA's review of the residue chemistry data submitted in support of the petition, the Agency has revised commodity definitions and/or some of the proposed tolerances and concludes that the establishment of the following tolerance is appropriate for the insecticide spinetoram as follows: Acerola at 0.30 ppm; almond, hulls at 2.0 ppm; amaranth grain, grain at 1.0 ppm; apple, wet pomace at 0.50 ppm; artichoke, globe at 0.30 ppm; asparagus at 0.04 ppm; atemoya at 0.30 ppm; avocado at 0.30 ppm; banana at 0.25 ppm; beet, sugar, molasses at 0.75 ppm; biriba at 0.30 ppm; brassica, head and stem, subgroup 5A at 2.0 ppm; brassica, leafy greens, subgroup 5B at 10 ppm; bushberry, subgroup 13B at 0.25 ppm; caneberry, subgroup 13A at 0.70 ppm; canistel at 0.30 ppm; cattle, fat at 5.5 ppm; cattle, liver at 0.85 ppm; cattle, meat at 0.20 ppm; cattle, meat byproducts (except liver) at 0.60 ppm; cherimoya at 0.30 ppm; citrus, dried pulp at 0.50 ppm; citrus, oil at 3.0 ppm; corn, sweet, kernel plus cob with husks removed at 0.04 ppm; cotton, gin byproducts at 1.5 ppm; cotton, undelinted seed at 0.04 ppm; cranberry at 0.04 ppm; custard apple at 0.30 ppm; egg at 0.04 ppm; feijoa at 0.30 ppm; fig at 0.10 ppm; fruit, citrus, group 10 at 0.30 ppm; fruit, pome, group 11 at 0.20 ppm; fruit, stone, group 12 at 0.20 ppm; goat, fat at 5.5 ppm; goat, liver at 0.85 ppm; goat, meat at 0.20 ppm; goat, meat byproducts (except liver) at 0.60 ppm; grain, aspirated fractions at 20 ppm; grain, cereal, group 15, except rice,

sorghum, pearl millet and proso millet at 0.04 ppm; grain, cereal, group 16, forage at 3.5 ppm; grain, cereal, group 16, hay at 10 ppm; grain, cereal, group 16, stover at 10 ppm; grain, cereal, straw, group 16, except rice at 1.0 ppm; grape at 0.50 ppm; grape, raisin at 0.70 ppm; guava at 0.30 ppm; herb, dried, subgroup 19A at 2.2 ppm; herb, fresh, subgroup 19A at 3.0 ppm; hog, fat at 0.40 ppm; hog, meat at 0.04 ppm; hog, meat byproducts at 0.04 ppm; horse, fat at 5.5 ppm; horse, liver at 0.85 ppm; horse, meat at 0.20 ppm; horse, meat byproducts (except liver) at 0.60 ppm; llama at 0.30 ppm; jaboticaba at 0.30 ppm; juneberry at 0.25 ppm; lingonberry at 0.25 ppm; longan at 0.30 ppm; lychee at 0.30 ppm; mango at 0.30 ppm; milk at 0.30 ppm; milk, fat at 7.5 ppm; millet, pearl, grain at 1.0 ppm; millet, proso, grain at 1.0 ppm; nut, tree, group 14 at 0.04 ppm; okra at 0.40 ppm; onion, green at 2.0 ppm; papaya at 0.30 ppm; passionfruit at 0.30 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.04 ppm; pea and bean, succulent shelled, subgroup 6B at 0.04 ppm; peanut at 0.04 ppm; peanut, hay at 11 ppm; peppermint, tops at 3.5 ppm; pistachio at 0.04 ppm; poultry, fat at 0.10 ppm; poultry, meat at 0.04 ppm; poultry, meat byproducts at 0.04 ppm; pulasan at 0.30 ppm; rambutan at 0.30 ppm; salal at 0.25 ppm; sapodilla at 0.30 ppm; sapote, black at 0.30 ppm; sapote, mamey at 0.30 ppm; sapote, white at 0.30 ppm; sheep, fat at 5.5 ppm; sheep, liver at 0.85 ppm; sheep, meat at 0.20 ppm; sheep, meat byproducts (except liver) at 0.60 ppm; sorghum, grain, grain at 1.0 ppm; soursop at 0.30 ppm; soybean, seed at 0.04 ppm; spanish lime at 0.30 ppm; spearmint, tops at 3.5 ppm; star apple at 0.30 ppm; star fruit at 0.30 ppm; strawberry at 1.0 ppm; sugar apple at 0.30 ppm; ti, leaves at 10 ppm; vegetable, bulb, group 3, except green onion at 0.10 ppm; vegetable, cucurbit, group 9 at 0.30 ppm; vegetable, foliage of legume, group 7 at 8.0 ppm; vegetable, fruiting, group 8 at 0.40 ppm; vegetable, leafy, except brassica, group 4 at 8.0 ppm; vegetable, leaves of root and tuber, group 2 at 10 ppm; vegetable, legume, edible podded, subgroup 6A at 0.30 ppm; vegetable, root and tuber, group 1 at 0.10 ppm; watercress at 8.0 ppm; and wax jambu at 0.30 ppm.

### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of 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 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 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 FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA 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 the combined residues of the insecticide spinetoram. 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. The toxicity database is incomplete for spinetoram; however, the database for spinetoram taken together with a similar spinosyn insecticide, spinosad, is adequate for risk assessment evaluations and determination of FQPA. All studies evaluated on spinetoram were deemed acceptable and met guideline criteria.

More detailed information on the studies received and the nature of the adverse effects caused by spinetoram 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 document entitled, "Spinetoram: Human Health Risk Assessment for Numerous Proposed Application Scenarios," dated September 20, 2007, by going to <http://www.regulations.gov>. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**,

and is identified as EPA-HQ-OPP-2007-0876-0003 in that docket. Locate and click on the hyperlink for docket ID number EPA-HQ-OPP-2007-0876. Double-click on the document to view the referenced information on pages 53-59 of 97.

#### 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 (UFs) 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 UFs. Short-term, intermediate-term 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 UFs 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/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

A summary of the toxicological endpoints for spinetoram used for human risk assessment can be found in the document entitled, "Spinetoram: Human Health Risk Assessment for Numerous Proposed Application Scenarios," dated September 20, 2007, by going to <http://www.regulations.gov>. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA-HQ-OPP-2007-0876-0003 in that docket. Locate and click on the hyperlink for docket ID

number EPA-HQ-OPP-2007-0876. Double-click on the document to view the referenced information on pages 29-30 of 97.

Briefly, EPA has concluded that spinetoram is toxicologically identical to another pesticide, spinosad. As a result, EPA picked the lowest of the spinosad and spinetoram endpoints for each exposure scenario.

#### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spinetoram, EPA considered exposure under the petitioned-for tolerances for spinetoram. Spinosad and spinetoram are toxicologically equivalent and this fact was taken into account in assessing aggregate exposure.

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. No such effects were identified in the toxicological studies for spinosad and spinetoram; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* As previously stated, spinosad and spinetoram are toxicologically equivalent; however, EPA has concluded it would overstate exposure to assume that residues of both spinosad and spinetoram would appear on the same food because both products control the same pest species, and thus it is unlikely that spinosad and spinetoram will be applied to the same crop. Rather, EPA aggregated exposure by either assuming that all commodities contain spinosad (because side-by-side spinosad and spinetoram residue data indicated that spinetoram residues were less than or equal to spinosad residues) or summing the percentage of a crop that would be treated with spinosad and the percentage that would be treated with spinetoram. The approach of assuming 100 percent crop treated (PCT) was used for all food commodities and the approach of summing the percent of commodities projected to be treated with spinosad and spinetoram for feed commodities.

The chronic dietary exposure assessment was conducted using the Dietary Exposure Evaluation Model - Food Consumption Intake Database, Version 2.03 (DEEM™-FCID) which incorporates the United States Department of Agriculture (USDA) 1994-1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). In addition to the PCT assumptions described above, EPA, in estimating chronic exposure, relied

upon average field-trial residues for apple, leafy vegetables (except Brassica), citrus and fruiting vegetables; tolerance-level residues for the remaining food crop commodities; average feed crop residues for feed commodities from the following crops - sweet corn forage, leaves of root and tuber vegetables and aspirated grain fractions; average residues from animal feeding and dermal magnitude of residue studies; DEEM™ (Version 7.81) default processing factors for all commodities excluding field corn (meal, starch, flour and oil), grape juice and wheat (flour and germ), where the results from the processing studies were assumed and modeled drinking water estimates.

iii. *Cancer.* Spinetoram is considered to be "Not likely to be Carcinogenic to Humans" based on its similarity to another spynosin pesticide, spinosad. Preliminary results of a carcinogenicity study in mice indicate that spinetoram is not carcinogenic to mice at doses up to 37.5 milligram/kilogram/day (mg/kg/day). As a result, cancer exposure assessment is not required for spinetoram.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of 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 FFDCA 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 FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

For the chronic dietary exposure assessment, EPA assumed: 100 PCT for all food crop commodities along with summing the percent of commodities projected to be treated with spinosad and spinetoram for feed commodities; average field-trial residues for apple, leafy vegetables (except Brassica), citrus and fruiting vegetables; tolerance-level residues for the remaining food crop commodities; average feed crop residues for feed commodities from the following crops: Sweet corn forage, leaves of root and tuber vegetables and aspirated grain fractions; average residues from animal feeding and dermal magnitude of residue studies; DEEM™ (Version 7.81) default processing factors for all commodities excluding field corn (meal,

starch, flour and oil), grape juice and wheat (flour and germ), where the results from the processing studies were assumed and modeled drinking water estimates.

EPA estimates an upper bound of projected percent crop treated (PPCT) for a new pesticide use by assuming that its actual PCT during the initial 5 years of use on a specific use site will not exceed the recent PCT of the market leader (i.e., the one with the greatest PCT) on that site. EPA calls this the market leader PPCT estimate. In this specific case, the new use to be estimated is the combined use of spinosad together with that of spinetoram since most new use of spinetoram will likely replace previous use of spinosad. An average market leader PCT, based on 3 recent surveys of pesticide usage, if available, is used for chronic risk assessment. The average market leader PCT may be based on 1 or 2 survey years if 3 are not available. Also, with limited availability of data, the average market leader PCT may be based on a cross-section of state PCTs. Comparisons are only made among pesticides of the same pesticide type (i.e., the leading insecticide on the use site is selected for comparison with the new insecticide), or, refined estimates, among pesticides targeting the same pests. The market leader PCTs used to determine the average may be each for the same pesticide or for different pesticides for any year since the same or different pesticides may dominate for each year. Typically, EPA uses USDA/National Agricultural Statistics Service (NASS) as the source for raw PCT data because it is publicly available. When a specific use site is not surveyed by USDA/NASS, EPA uses other sources including proprietary data.

An estimated PPCT, based on the average PCT of the market leaders, is appropriate for use in chronic dietary risk assessment. This method of estimating PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. Predominant factors that bear on whether the PPCT could be exceeded may include PCTs of similar chemistries, pests controlled by alternatives, pest prevalence in the market and other factors. All relevant information currently available for predominant factors has been considered for the combined use of spinetoram and spinosad on each of these several crops. It is the Agency's opinion that it is unlikely that actual combined PCTs for spinetoram and spinosad will exceed the corresponding

estimated PPCTs during the next five years.

The PPCTs for the combined use of spinosad and spinetoram for chronic risk assessment were determined using the market leader approach for the feed commodities of sweet corn, grain sorghum, soybeans and turnip greens. For turnip greens, the PCTs of market leaders were averaged over states rather than years because only 1-year of data was available.

The Agency believes that the 3 conditions listed in this Unit 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 spinetoram may be applied in a particular area.

*2. Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for spinetoram in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of spinetoram. 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>.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of spinetoram for acute exposures are estimated to be 14.419 parts per billion (ppb) for surface water and 0.072 ppb

for ground water. The EECs for chronic exposures are estimated to be 6.171 ppb for surface water and 0.072 ppb 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 14.419 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 6.171 ppb 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).

The Agency has concluded that spinosad and spinetoram are toxicologically equivalent; therefore, residential exposure to both spinosad and spinetoram was evaluated. Spinosad is currently registered for the following residential non-dietary sites: Homeowner application to turf grass and ornamentals to control a variety of worms, moths, flies, beetles, midges, thrips, leafminers and fire ants (granular formulation). Spinetoram is proposed for homeowner applications to gardens, lawns/ornamentals and turf grass for control of lepidopterous larvae (worms or caterpillars), dipterous leafminers, thrips, sawfly larvae, certain psyllids and leaf-feeding beetles and red imported fire ants.

There is potential for residential handler and post-application exposures to both spinosad and spinetoram. Since spinosad and spinetoram control the same pests, EPA concludes that these products will not be used in combination with each other and combining the residential exposures is unnecessary. Short-term residential inhalation risks were estimated for adult residential handlers, as well as short-term post-application incidental oral risks for toddlers, based on applications to home lawns, home gardens and ornamentals.

*4. Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCIA 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 spinetoram and any other substances and spinetoram 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 spinetoram 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>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10x") ten-fold margin of safety for infants and children in the case of threshold effects to account for pre- and/or post-natal 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 UFs and/or special FQPA safety factors, as appropriate.

2. *Pre-natal and post-natal sensitivity.* There is no evidence of increased susceptibility of rat and rabbit fetuses to in utero exposure to spinetoram. In the developmental toxicity study in rats, no developmental effects were observed at dose levels that induced maternal toxicity. In the developmental study in rabbits, no developmental toxicity was seen at dose levels that induced maternal toxicity. In the 2-generation reproduction study, no offspring toxicity occurred. Parental/systemic toxicity was observed at a lower dose than the dose at which offspring showed no effects.

3. *Conclusion.* EPA has determined that reliable data show that it would be safe for infants and children to reduce the 10x FQPA safety factor to 1x. That decision is based on the following findings:

i. The toxicity database for spinetoram is adequate for this risk assessment despite the lack of a chronic toxicity study in rats. The preliminary review of a mouse carcinogenicity study provides evidence that the chronic toxicity of spinosad and spinetoram is comparable

since spinetoram chronic toxicity produced similar toxicity at the similar doses as seen previously with spinosad. Therefore, it is expected that the ongoing spinetoram chronic carcinogenicity study in rats would produce similar chronic toxicity at a similar dose as was seen in the chronic toxicity study in rats with spinosad.

ii. There is no indication that spinetoram is a neurotoxic chemical and there is no need for a DNT study or additional UFs to account for neurotoxicity.

iii. There is no evidence that spinetoram results in increased susceptibility in *in utero* rats or rabbits in the pre-natal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases.

#### 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 UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-term, intermediate-term 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 UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, no acute risks were identified in the toxicological studies for spinosad and spinetoram; therefore, a quantitative acute dietary exposure assessment is not required for spinetoram.

2. *Chronic risk.* Since there are no registered/proposed uses which result in chronic residential exposures, the chronic aggregate exposure assessment is concerned only with exposure from food and water. Using the exposure assumptions described in this unit for chronic dietary exposure, EPA has concluded that exposure to spinosad and spinetoram from food and water will utilize  $\leq 72\%$  of the cPAD for the population group children 1-2 years old, the most highly exposed population.

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).

Spinetoram is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to

aggregate chronic food and water and short-term exposures for spinetoram.

Short-term incidental oral exposures to toddlers are anticipated from the registered turf and ornamental application scenarios for spinosad and spinetoram and short-term inhalation exposure to handler/applicators is anticipated for the proposed home garden, turf and ornamental application scenarios for spinetoram; however, no handler/applicator exposure to spinosad is anticipated. Since spinosad and spinetoram control the same pests, EPA concludes that these products will not be used in combination with each other and incidental oral exposure from spinosad and spinetoram do not need to be added together. For aggregate short-term assessment, EPA selected the incidental oral exposure resulting from application of spinosad as this was higher than the incidental exposure resulting from application of spinetoram.

The incidental oral or inhalation exposures were combined with chronic dietary (food and water) exposure for determination of aggregate short-term exposure. EPA uses chronic dietary exposure when conducting short-term aggregate assessments as it has been determined that this will more accurately reflect exposure from food over the Agency's defined short-term interval (1-30 days) than will acute exposure. Since the short-term inhalation and incidental oral endpoints are based on the same study and since the level of concern for incidental oral and inhalation assessments are both 100, chronic dietary exposure may be added to short-term inhalation or short-term incidental oral exposure and this total exposure can then be compared to the selected endpoints for aggregate risk assessment. The aggregate MOEs are  $\geq 190$ ; therefore, short-term aggregate exposure to spinosad and spinetoram are not of concern to EPA.

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, no toxicological effects have been identified for intermediate-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water.

5. *Aggregate cancer risk for U.S. population.* The Agency considers spinetoram to be "Not likely to be Carcinogenic to Humans." See Unit III.C.iii. for more detailed information.

6. *Determination of safety.* Based on the risk assessment, 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 spinetoram residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

EPA review of the proposed enforcement method, without laboratory trial, indicates that the registrant's methods for plant and animal commodities appear to meet the Agency's residue chemical guidelines for acceptable tolerance enforcement methods. EPA recommends that a laboratory validation is not necessary for spinetoram based on the following reasons:

- The methods appear well-written and include detailed instructions.
- The methods appear quick and efficient.
- The recovery data are acceptable for all tested commodities; and
- The independent laboratory validation (ILV) data submitted are acceptable and indicate that method performance is acceptable. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Fort Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

There are currently no established CODEX, Canadian or Mexican maximum residue limits (MRLs) for residues of spinetoram in/on various plant and livestock commodities. The Agency notes that spinetoram is being evaluated as part of a joint review with Health Canada's Pest Management Regulatory Agency (PMRA) and the plant tolerances recommended in Unit V. are based on translation of spinosad residue data (i.e., translation of the spinosad tolerances). The majority of the spinosad plant tolerances were established prior to the use of the tolerance spreadsheet calculator and the procedure used by EPA and PMRA to establish these tolerances were different; therefore, many of the plant tolerances are not harmonized with the Canadian MRLs although they are based on the same residue data. Since the EPA and PMRA spinetoram tolerances are based on the same residue data, trade issues are not expected to be an issue. EPA harmonized the livestock tolerances with the Canadian MRLs when possible (i.e., when the PMRA-recommended tolerance was greater than the EPA-recommended tolerance).

#### V. Conclusion

Therefore, the tolerance is established for the combined residues of the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-H-as-Indaceno[3,2-d]o oxacyclododecin-7,15-dione, 2-[[[6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-Lmannopyranosyl]oxy]-13-[[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro-14-methyl-, (2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR)] and XDE-175-L: 1H-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[[[6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-Lmannopyranosyl]oxy]-13-[[[(2R,5S,6R)-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-4,14-dimethyl-, (2S,3aR,5aS,5bS,9S,13S,14R,16aS,16bS)].

#### 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: September 27, 2007.

**Debra Edwards,**

*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 180.635 is added to read as follows:

**§ 180.635 Spinetoram; tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of

the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-H-as-Indaceno[3,2-d]o oxacyclododecin-7,15-dione, 2-[[[6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-Lmannopyranosyl]oxy]-13-[[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro-14-methyl-, (2R,3aR,5aR,5bS,9S,13S,14R,16aS,16bR)] and XDE-175-L: 1H-as-Indaceno[3,2-

d]oxacyclododecin-7,15-dione, 2-[[[6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-Lmannopyranosyl]oxy]-13-[[[(2R,5S,6R)-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-4,14-dimethyl-, (2S,3aR,5aS,5bS,9S,13S,14R,16aS,16bS)], in or on the following raw agricultural commodities:

Commodity	Parts per million
Acerola .....	0.30
Almond, hulls .....	2.0
Amaranth grain, grain .....	1.0
Apple, wet pomace .....	0.50
Artichoke, globe .....	0.30
Asparagus .....	0.04
Atemoya .....	0.30
Avocado .....	0.30
Banana .....	0.25
Beet, sugar, molasses .....	0.75
Biriba .....	0.30
Brassica, head and stem, subgroup 5A .....	2.0
Brassica, leafy greens, subgroup 5B .....	10
Bushberry, subgroup 13B .....	0.25
Caneberry, subgroup 13A .....	0.70
Canistel .....	0.30
Cattle, fat .....	5.5
Cattle, liver .....	0.85
Cattle, meat .....	0.20
Cattle, meat byproducts (except liver) .....	0.60
Cherimoya .....	0.30
Citrus, dried pulp .....	0.50
Citrus, oil .....	3.0
Corn, sweet, kernel plus cob with husks removed .....	0.04
Cotton, gin byproducts .....	1.5
Cotton, undelinted seed .....	0.04
Cranberry .....	0.04
Custard apple .....	0.30
Egg .....	0.04
Feijoa .....	0.30
Fig .....	0.10
Fruit, citrus, group 10 .....	0.30
Fruit, pome, group 11 .....	0.20
Fruit, stone, group 12 .....	0.20
Goat, fat .....	5.5
Goat, liver .....	0.85
Goat, meat .....	0.20
Goat, meat byproducts (except liver) .....	0.60
Grain, aspirated fractions .....	20
Grain, cereal, group 15, except rice, sorghum, pearl millet and proso millet .....	0.04
Grain, cereal, group 16, forage .....	3.5
Grain, cereal, group 16, hay .....	10
Grain, cereal, group 16, stover .....	10
Grain, cereal, straw, group 16, except rice .....	1.0
Grape .....	0.50
Grape, raisin .....	0.70
Guava .....	0.30
Herb, dried, subgroup 19A .....	22
Herb, fresh, subgroup 19A .....	3.0
Hog, fat .....	0.40
Hog, meat .....	0.04
Hog, meat byproducts .....	0.04
Horse, fat .....	5.5
Horse, liver .....	0.85
Horse, meat .....	0.20
Horse, meat byproducts (except liver) .....	0.60
llama .....	0.30
Jaboticaba .....	0.30
Juneberry .....	0.25
Lingonberry .....	0.25

Commodity	Parts per million
Longan .....	0.30
Lychee .....	0.30
Mango .....	0.30
Milk .....	0.30
Milk, fat .....	7.5
Millet, pearl, grain .....	1.0
Millet, proso, grain .....	1.0
Nut, tree, group 14 .....	0.04
Okra .....	0.40
Onion, green .....	2.0
Papaya .....	0.30
Passionfruit .....	0.30
Pea and bean, dried shelled, except soybean, subgroup 6C .....	0.04
Pea and bean, succulent shelled, subgroup 6B .....	0.04
Peanut .....	0.04
Peanut, hay .....	11
Peppermint, tops .....	3.5
Pistachio .....	0.04
Poultry, fat .....	0.10
Poultry, meat .....	0.04
Poultry, meat byproducts .....	0.04
Pulasan .....	0.30
Rambutan .....	0.30
Salal .....	0.25
Sapodilla .....	0.30
Sapote, black .....	0.30
Sapote, mamey .....	0.30
Sapote, white .....	0.30
Sheep, fat .....	5.5
Sheep, liver .....	0.85
Sheep, meat .....	0.20
Sheep, meat products (except liver) .....	0.60
Sorghum, grain, grain .....	1.0
Soursop .....	0.30
Soybean, seed .....	0.04
Spanish lime .....	0.30
Spearmint, tops .....	3.5
Star apple .....	0.30
Star fruit .....	0.30
Strawberry .....	1.0
Sugar apple .....	0.30
Ti, leaves .....	10
Vegetable, bulb, group 3, except green onion .....	0.10
Vegetable, cucurbit, group 9 .....	0.30
Vegetable, foliage of legume, group 7 .....	8.0
Vegetable, fruiting, group 8 .....	0.40
Vegetable, leafy, except Brassica, group 4 .....	8.0
Vegetable, leaves of root and tuber, group 2 .....	10
Vegetable, legume, edible podded, subgroup 6A .....	0.30
Vegetable, root and tuber, group 1 .....	0.10
Watercress .....	8.0
Wax jambu .....	0.30

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registration. [Reserved]

(d) Indirect and invertent residues. [Reserved]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 061020273-7001-03]

RIN 0648-XC92

**Fisheries of the Northeastern United States; Summer Flounder Fishery; Rescission of Commercial Closure for Connecticut**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; rescission of closure.

**SUMMARY:** NMFS announces rescission of the closure previously issued for the State of Connecticut. This notification is consistent with Connecticut's announcement to reopen the commercial summer flounder fishery within State waters, effective September 24, 2007. The rescission of this closure is due to catch accounting corrections that have reduced previously reported landings in Connecticut. The public is advised that landings are allowed for

summer flounder Federal permit holders until it is determined that the quota has been fully harvested.

**DATES:** Effective 0001 hours, October 10, 2007, through December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the summer flounder fishery are at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

NMFS, in compliance with regulations found at 50 CFR part 648, closed the Federal commercial summer flounder fishery for the State of Connecticut after determining through quota monitoring that Connecticut had harvested its allocated summer flounder quota. This closure published at 72 FR 48945, August 27, 2007, was effective August 27, 2007, and was intended to last through December 31, 2007.

Later analyses comparing electronic dealer reports to commercial fishermen logbooks and Federal fishing vessel trip reports have revealed instances of summer flounder landings being attributed to Connecticut that were actually landed in other states. Due to this new information, Connecticut has reinstated a possession limit for the commercial harvest of summer flounder of 75 lb (34 kg). This notification announces NMFS's decision to allow Federally permitted vessels to land summer flounder in Connecticut until the quota is determined to be fully harvested. Therefore, effective 0001 hours October 10, 2007, through December 31, 2007, further landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are allowed until the remaining quota has been harvested. Effective 0001 hours, October 10, 2007, through December 31, 2007, federally permitted dealers are also notified that they may purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the quota harvest.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 3, 2007.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Services.*

[FR Doc. E7-19928 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 070213033-7033-01]

**RIN 0648-XD21**

**Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 Atka mackerel total allowable catch (TAC) in the Western Aleutian District of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 4, 2007, through 2400 hrs, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Atka mackerel TAC in the Western Aleutian District of the BSAI is 8,880 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 Atka mackerel TAC in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,870 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 3, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 3, 2007.

**Emily H. Menashes**

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

[FR Doc. 07-4992 Filed 10-4-07; 1:57 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 72, No. 195

Wednesday, October 10, 2007

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-29110; Directorate Identifier 2007-NE-35-AD]

RIN 2120-AA64

#### Airworthiness Directives; Pratt & Whitney PW4090 and PW4090-3 Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney (PW) PW4090 and PW4090-3 turbofan engines with front turbine hub, part number (P/N) 53L601, installed. This proposed AD would reduce the published life limit of those front turbine hubs from 12,000 cycles-since-new (CSN) to 9,370 CSN. This proposed AD would also remove from service those front turbine hubs using a drawdown schedule. This proposed AD results from PW updating the low-cycle-fatigue (LCF) life analysis for front turbine hubs, P/N 53L601. We are proposing this AD to prevent an uncontained failure of the front turbine hub, resulting in an in-flight engine shutdown and possible damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by December 10, 2007.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** (202) 493-2251.

#### FOR FURTHER INFORMATION CONTACT:

Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [mark.riley@faa.gov](mailto:mark.riley@faa.gov), telephone (781) 238-7758; fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2007-29110; Directorate Identifier 2007-NE-35-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

##### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is the same as the Mail address provided in

the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

##### Discussion

PW Engineering updated their life analysis for the front turbine hub, P/N 53L601, to incorporate new temperature data in the hub aft cavity area. The revised cavity temperatures cause higher than anticipated stress levels in the anti-rotation slots of the front turbine hub. This results in a reduced published LCF life limit from 12,000 CSN to 9,370 CSN. This condition, if not corrected, could result in uncontained engine failure resulting in an in-flight engine shutdown and possible damage to the airplane.

##### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would:

- Reduce the published life limit of front turbine hub, P/N 53L601, from 12,000 CSN to 9,370 CSN; and
- Remove from service those front turbine hubs using a drawdown schedule.

##### Costs of Compliance

We estimate that this proposed AD would affect 94 engines installed on airplanes of U.S. registry. We also estimate that it would take about 101 work-hours per engine to perform the proposed actions, and that the average labor rate is \$80 per work-hour. The prorated cost due to a life reduction from 12,000 CSN to 9,370 CSN for the front turbine hub is about \$66,460 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$6,247,240.

##### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Pratt & Whitney:** Docket No. FAA-2007-29110; Directorate Identifier 2007-NE-35-AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 10, 2007.

### Affected ADs

- (b) None.

### Applicability

(c) This AD applies to Pratt & Whitney (PW) PW4090 and PW4090-3 turbofan engines with front turbine hub part number (P/N) 53L601, installed. These engines are installed on, but not limited to, Boeing 777-200 series and 777-300 series airplanes.

### Unsafe Condition

(d) This AD results from PW updating the low-cycle-fatigue (LCF) life analysis for front turbine hubs, P/N 53L601. We are proposing this AD to prevent an uncontained failure of the front turbine hub, resulting in an in-flight engine shutdown and possible damage to the airplane.

### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Remove front turbine hubs, P/N 53L601, from service and install a serviceable front turbine hub, as follows:

(1) For front turbine hubs that have accumulated fewer than 3,370 cycles-since-new (CSN) on the effective date of this AD, remove from service before the hub accumulates 9,370 CSN.

(2) For front turbine hubs that have accumulated 3,370 or more CSN, but fewer than 9,370 CSN on the effective date of this AD, do the following:

(i) For engines that have an engine shop visit (ESV) before the front turbine hub accumulates 9,370 CSN, remove the front turbine hub from service before the hub accumulates 9,370 CSN.

(ii) For engines that do not have an ESV before the front turbine hub accumulates 9,370 CSN, remove the front turbine hub from service at the next ESV, or before the hub accumulates an additional 6,000 cycles-since-last high pressure turbine overhaul, whichever occurs first, but not to exceed 12,000 CSN.

(3) For front turbine hubs that have accumulated 9,370 or more CSN on the effective date of this AD, remove the front turbine hub from service at the next ESV, or before the hub accumulates 12,000 CSN, whichever occurs first.

(g) This AD establishes a new reduced published life limit for the PW4090 turbine front hub, P/N 53L601, of 9,370 CSN, which is published in Chapter 05, Time Limits Section 05-10-01, of the PW4000 Series Engine Shop Manual, P/N 51A751. The following conditions also apply:

(1) Except as provided in paragraphs (f)(2)(ii) and (f)(3) of this AD, no alternative retirement lives may be approved for the PW4090 front turbine hub, P/N 53L601.

(2) After the effective date of this AD, PW4090 front turbine hub, P/N 53L601, may not be installed or reinstalled on an engine if the hub has accumulated more than 9,370 CSN.

(h) For the purposes of this AD, an "engine shop visit" is:

- (1) The induction of an engine into the shop for maintenance involving the

separation of any major mating engine flange, except that for the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit; or

- (2) The removal of a disk or spool.

### Alternative Methods of Compliance

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

### Related Information

(j) Information on an approved front turbine hub rework procedure for increased life is available from the manufacturer. See Pratt & Whitney Service Bulletin PW4G-112-72-290, dated July 2, 2007. The reworked front turbine hub, P/N 53L601-001, is not affected by this AD.

(k) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [mark.riley@faa.gov](mailto:mark.riley@faa.gov), telephone (781) 238-7758; fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts, on October 2, 2007.

**Peter A. White,**

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

[FR Doc. E7-19927 Filed 10-9-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-138707-06]

RIN 1545-BF90

### Exclusions From Gross Income of Foreign Corporations; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document cancels a public hearing on proposed regulations relating to income derived by foreign corporations from the international operation of ships or aircraft.

**DATES:** The public hearing, originally scheduled for October 24, 2007 at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel

(Procedure and Administration) at (202) 622-0392 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG-138707-06) that appeared in the **Federal Register** on Monday, June 25, 2007 (72 FR 34650), announced that a public hearing was scheduled for October 24, 2007, at 10 a.m. in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 883 of the Internal Revenue Code.

The public comment period for these regulations expired on September 24, 2007. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed by September 24, 2007. As of September 28, 2007, no one has requested to speak and therefore, the public hearing scheduled for October 24, 2007, is cancelled.

**LaNita VanDyke,**

*Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7-19871 Filed 10-9-07; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Parts 780, 784, 816, and 817

[Docket Number OSM-2007-0007]

**RIN 1029-AC04**

### Excess Spoil, Coal Mine Waste, and Buffers for Waters of the United States

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; notice of public hearings and extension of comment period.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing a 30-day extension of the comment period on a proposed rule published in the August 24, 2007, **Federal Register** and the accompanying draft environmental impact statement (DEIS). This notice also provides notice of the dates and locations for the public hearings that we

will hold on the proposed rule and DEIS. The proposed rule concerns buffer zones, stream diversions, siltation structures, impoundments, and the creation and disposal of excess spoil and coal mine waste.

**DATES:** We will accept written comments on the proposed rule and DEIS on or before November 23, 2007. We will hold public hearings on the proposed rule and DEIS on October 24, 2007, at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

**ADDRESSES:** Please submit comments by one of the methods listed below. We cannot guarantee that comments submitted by other means or to other addresses will be included in the docket for this rulemaking.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule and DEIS are listed under the agency name "Office of Surface Mining Reclamation and Enforcement." The proposed rule has been assigned Docket ID: OSM-2007-0007. The DEIS has been assigned Docket ID: OSM-2007-0008.

If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and do the following. Find the blue banner with the words "Search Documents" and go to "Optional Step 2." Select "Office of Surface Mining Reclamation and Enforcement" from the agency drop-down menu, then click the "Submit" button at the bottom of the page. The next screen will have the title "Document Search Results." The proposed rule is listed under the Docket ID as OSM-2007-0007. If you click on OSM-2007-0007, you can view the proposed rule, add comments, and view comments submitted by other persons. The DEIS is listed under the Docket ID as OSM-2007-0008. If you click on OSM-2007-0008, you can view the DEIS, add comments, and view comments submitted by other persons.

- *Mail/Hand-Delivery/Courier:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

#### Reviewing a Copy of the DEIS

You may review the DEIS at any of the public libraries listed in the notice of availability published in the **Federal Register** on August 24, 2007 (72 FR 48678-48679) or at the following locations:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101 SIB, 1951 Constitution Avenue, NW.,

Washington, DC 20240, 202-208-4264

Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Office, Three Parkway Center, Pittsburgh, PA 15220, 412-937-2909

Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Office, Alton Federal Building, 501 Belle Street, Room 216, Alton, IL 62002, 618-463-6460

Office of Surface Mining Reclamation and Enforcement, Western Regional Office, 1999 Broadway, Suite 3320, Denver, CO 80201-6667, 303-844-1401

#### Public Hearing Locations

See the **SUPPLEMENTARY INFORMATION** section of this notice for the addresses at which we will hold public hearings on the proposed rule and DEIS.

**FOR FURTHER INFORMATION CONTACT:** Dennis G. Rice, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone: 202-208-2829.

**SUPPLEMENTARY INFORMATION:** On August 24, 2007 (72 FR 48890), we published a proposed rule proposing to amend our regulations concerning stream buffer zones, stream diversions, siltation structures, impoundments, and the creation and disposal of excess spoil and coal mine waste. Among other things, this proposed rule would require that surface coal mining operations be designed to minimize the creation of excess spoil and the adverse environmental impacts of fills constructed to dispose of excess spoil and coal mine waste. It would apply the buffer requirement to all waters of the United States, not just perennial and intermittent streams. The rule would clearly specify the activities to which that requirement does and does not apply and the limitations on conducting activities within the buffer, either under a variance or an exception. It also would specify requirements to protect aquatic and other resources when an activity is conducted under either a variance or an exception.

The comment period on the proposed rule and the DEIS was scheduled to close October 23, 2007. However, we received numerous requests to extend the comment period. After reviewing the requests, we are extending the deadline for submission of comments by 30 days. The comment period for both the proposed rule and the DEIS will now close November 23, 2007.

We also received numerous requests to hold public hearings on the proposed

rule and DEIS. After reviewing the requests, we have decided to hold four public hearings on October 24, 2007, at the following locations:

- Holiday Inn Charleston (Charleston House), 600 Kanawha Boulevard East, Charleston, West Virginia.
- Hazard Community & Technical College, Hazard Campus, Jolly Center, Room 208, One Community College Drive, Hazard, Kentucky.
- Pellissippi State Technical Community College, Goins Auditorium, 10915 Hardin Valley Road, Knoxville, Tennessee.
- Ramada Inn Washington, 1170 West Chestnut Street, Washington, Pennsylvania.

All hearings are scheduled to begin at 6 p.m. and end at 9 p.m. They will be open to anyone who would like to attend or testify. If you do not sign up to testify initially, but later decide that you wish to do so, you will be allowed to testify after all scheduled speakers have finished.

The primary purpose of the hearings is to obtain input on the proposed rule and DEIS. A public hearing is not an adversarial process. Therefore, we encourage you to limit your testimony to the merits of the provisions of the proposed rule and DEIS.

At the hearing, a court reporter will record and make a written record of the statements presented. This written record will be made part of the docket for the rule. If you have a written copy of your testimony, we encourage you to provide a copy to assist the court reporter in preparing the written record. Please do not feel intimidated by either the reporter or the formal structure of the hearing.

If you are a disabled individual who needs reasonable accommodation to attend a public hearing, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 1, 2007.

**Foster L. Wade,**

*Deputy Assistant Secretary, Land and Minerals Management.*

[FR Doc. E7-19961 Filed 10-9-07; 8:45 am]

BILLING CODE 4310-05-P

## POSTAL SERVICE

### 39 CFR Part 111

#### New Address Requirements for Automation, Presorted, and Carrier Route Rate Letters

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes new type size and spacing requirements for delivery addresses on all automation, presorted, and carrier route rate letters.

**DATES:** We must receive your comments on or before December 10, 2007.

**ADDRESSES:** Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260-3436. You may inspect and photocopy all written comments at Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Carrie Witt, 202-268-7279.

**SUPPLEMENTARY INFORMATION:** We are proposing revisions to the address standards for letter-size pieces mailed at automation, presorted, or carrier route rates. Under the new standards, all letters mailed at discount rates must be addressed using a minimum of 8-point type. In addition, for automation rate letters, the lines and the characters in the address must not touch or overlap, and each element on the address line may be separated by no more than three blank character spaces.

We are proposing these changes to improve address readability for our high-speed processing systems and for our letter carriers during delivery. Legible, standardized address information enhances the processing and delivery of mail, reduces undeliverable-as-addressed mail, and provides mutual cost reduction opportunities through improved efficiency. We can better ensure effective, accurate, and timely delivery when letter carriers receive mailpieces clearly addressed in a readable format.

Many postal processing systems rely on optical character readers that require standardized, high-quality addresses for efficient processing. Even barcoded pieces must include a readable address for systems like the Postal Automated Redirection System (PARS). PARS relies on the printed address to identify and redirect forwardable mail during processing, and pieces read by PARS are instantly routed to their new address for the most efficient delivery.

We recently proposed similar address requirements for flat-size mail in preparation for the new Flats Sequencing System technology. These revisions for letters will further promote consistent addressing for both letters and flats and ensure that address standards are met when letters are used as label carriers for flat-size pieces.

To mitigate the larger type size requirements in the address block, we are looking at ways to shorten optional endorsement lines and allow mailers to place mailer-specified information (such as customer numbers) to the left of the optional endorsement line when OneCode ACS is used. We are also planning to reduce the amount of clear space required under the Intelligent Mail barcode. We will publish these changes in a future revision.

Mailers can also take advantage of the Intelligent Mail barcode to save valuable space on letter-size pieces. One Intelligent Mail barcode can include all tracking and routing information, including ACS and CONFIRM, for that mailpiece. For other ways to reduce address block size, we encourage mailers to refer to Publication 28, *Postal Addressing Standards* (available on Postal Explorer at [pe.usps.com](http://pe.usps.com); click on "Address Quality" in the left frame, then "Address Management Publications"). Publication 28 also provides tips and best practices to help mailers address all of their mailpieces successfully.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

#### PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

#### 200 Discount Mail: Letters and Cards

\* \* \* \* \*

#### 202 Elements on the Face of a Mailpiece

##### 1.0 All Mailpieces

\* \* \* \* \*

[Revise 1.2 as follows:]

1.2 Delivery Address

The delivery address specifies the location to which the USPS is to deliver a mailpiece. Except for mail prepared with detached address labels under 602.4.0, the piece must have the address of the intended recipient, visible and legible, only on the side of the piece bearing postage (see 2.0). Use at least 8-point type (8-point type is approximately 1/16-inch high). An Arial font is preferred. These additional standards apply to automation rate letters:

a. The individual characters and the individual lines in the address cannot touch or overlap. A minimum 0.028-inch clear space between lines is preferred.

b. Each element on each line of the address may be separated by no more than three blank character spaces. For example, "ANYTOWN U.S. 12345," not "ANYTOWN U.S. 12345."

\* \* \* \* \*

230 First-Class Mail

233 Rates and Eligibility

\* \* \* \* \*

5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Letters

\* \* \* \* \*

5.4.4 Address Elements

[Revise 5.4.4 to add a new last sentence as follows:]

\* \* \* Addresses must also meet the standards for address placement, line spacing, and type size in 202.1.2.

\* \* \* \* \*

240 Standard Mail

243 Rates and Eligibility

\* \* \* \* \*

7.0 Eligibility Standards for Automation Rate Standard Mail

7.1 Basic Eligibility Standards for Automation Rate Standard Mail

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation rate mailing must:

\* \* \* \* \*

[Revise item d to delete "or numeric equivalent to the delivery point barcode (DPBC)" as follows:]

d. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Renumber items d1 and d2 as items d2 and d3. Insert new item d1 as follows:]

1. The address placement, line spacing, and type size standards in 202.1.2.

\* \* \* \* \*

700 Special Standards

\* \* \* \* \*

707 Periodicals

\* \* \* \* \*

3.0 Physical Characteristics and Content Eligibility

\* \* \* \* \*

3.2 Addressing

\* \* \* \* \*

3.2.3 Address Placement

[Revise 3.2.3 to reference the new address standards for letters as follows:]

The delivery address must be clearly visible on or through the outside of the mailpiece, whether placed on a label or directly on the host publication, a component, or the mailing wrapper. If placed on the mailing wrapper, the address must be on a flat side, not on a fold. If a polybag is used, the address must not appear on a component that rotates within the bag, and the address must remain visible throughout the addressed component's range of motion. For flat-size pieces, mailers must follow the additional address placement and formatting standards in 302.2.0 and 302.5.0. For letter-size pieces, mailers must follow the additional address placement and formatting standards in 202.1.0.

\* \* \* \* \*

13.0 Carrier Route Rate Eligibility

13.1 Basic Standards

\* \* \* \* \*

13.1.2 Address Quality

All pieces in a Periodicals carrier route rate mailing must bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

\* \* \* \* \*

[Insert new item d as follows:]

d. For flat-size pieces, mailers must follow the additional address placement and formatting standards in 302.2.0 and 302.5.0. For letter-size pieces, mailers must follow the additional address placement and formatting standards in 202.1.0.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect

these changes if our proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7-19931 Filed 10-9-07; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

39 CFR Part 111

Elimination of Cash and Check Deposits Into Local Trust Accounts for Express Mail Corporate Accounts

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) by providing Automated Clearing House (ACH) debit as a new method of payment for Express Mail Corporate Account (EMCA) customers. The ACH system is a secure, private network that connects banks to one another by way of the Federal Reserve Board. This network enables electronic payments, such as debit card purchases, to be handled and processed. This proposed rule would also eliminate cash and check deposits made into local trust accounts. EMCA customers would still have three options to fund their accounts: Participate in the Centralized Account Processing System (CAPS), use a personal or business credit or debit card, or authorize the USPS to originate an ACH debit from a specified bank account.

DATES: Submit comments on or before November 9, 2007.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260-3436. Written comments may also be submitted via fax to 202-268-4955. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC 20260-0004.

FOR FURTHER INFORMATION CONTACT: Joe Owens, 202-268-7460, or Garry A. Rodriguez, 202-268-7281, United States Postal Service.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to eliminate cash and check deposits in local trust accounts and to provide Automated Clearing House (ACH) as a new method of payment for Express Mail Corporate

Account (EMCA) customers as part of the Postal Service's ongoing mission to help grow revenue in a competitive market by increasing efficiencies, enhancing financial controls, and reducing costs.

Currently EMCA customers may use one of the following payment methods to fund their accounts:

- a. Participate in the Centralized Account Processing System (CAPS).
- b. Use a personal or business credit card.
- c. Make an initial deposit with cash or by check of \$250, or the total postage and fees expected during the first 4 weeks of account usage, whichever is higher.

After the first 4 weeks, the minimum balance in the account must equal an average week's postage and fees, or \$100, whichever is higher.

Under this proposal, cash and check deposits would be eliminated and customers would be provided with an ACH payment method as a new option.

Effective December 1, 2007, new EMCA customers would be required to fund their accounts using one of the following payment methods:

- a. Use a personal or business credit or debit card.
- b. Authorize the USPS to originate an ACH debit from a specified bank account.
- c. Participate in the Centralized Account Processing System (CAPS) debit only if combined with other PostalOne® accounts such as permit imprint, Periodicals, business reply mail, and Address Element Correction.

By using an electronic payment option, customers will no longer have to go to a Post Office™ to make deposits into their EMCA trust accounts. This new payment option enhances financial control by reducing risk and eliminating the administrative costs of pursuing negative balance or delinquent EMCA accounts.

Existing EMCA customers who deposit cash and checks in local trust accounts will be transitioned to electronic payment methods during the next year. Details of this effort will be directly communicated to current EMCA customers.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual, incorporated in the Code of Federal Regulations. See 39 CFR 111.1, 111.4.

## List of Subjects in 39 CFR Part 111

Postal Service.

### PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as set forth below:

\* \* \* \* \*

#### 100 Retail Mail

\* \* \* \* \*

#### 110 Express Mail

\* \* \* \* \*

#### 114 Postage Payment Methods

\* \* \* \* \*

#### 2.0 Corporate Accounts

\* \* \* \* \*

#### 2.4 Minimum Balance

For opening and maintaining an account, the mailer may do any of the following: [Revise the text in items a, b, and c as follows:]

a. Use a personal or business credit or debit card.

b. Authorize the USPS to originate an ACH debit from a specified bank account.

c. Participate in the Centralized Account Processing System (CAPS) debit only if combined with other PostalOne® accounts such as permit imprint, Periodicals, business reply mail, and Address Element Correction.

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. E7–19934 Filed 10–9–07; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### 39 CFR Part 111

#### New Address and Barcode Requirements for Automation, Presorted, and Carrier Route Flat-Size Mail

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes new address placement requirements for Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library

Mail flat-size pieces sent at automation, presorted, or carrier route rates. We also propose to require an 11-digit POSTNET barcode or Intelligent Mail barcode on flat-size First-Class Mail, Periodicals, Standard Mail, and Bound Printed Matter sent at automation rates. In addition, we propose related revisions to the address requirements for automation and presorted First-Class Mail flats.

**DATES:** We must receive your comments on or before December 10, 2007.

**ADDRESSES:** Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Carrie Witt, 202–268–7279.

**SUPPLEMENTARY INFORMATION:** The Postal Service is implementing a new technology, the Flats Sequencing System (FSS), to automate delivery sequencing for flat-size mail. Currently, flat-size mail is sorted mechanically only to the 9-digit ZIP Code or carrier level, and then manually sorted into delivery order by carriers. FSS can sort flat-size mailpieces into delivery sequence, increasing efficiency by reducing carriers' time sorting mail, and allowing carriers to begin delivering mail earlier in the day.

Similar technology boosted postal efficiencies in processing and delivering letter mail in the 1990s. We can significantly increase efficiency and reduce delivery costs for flat-size mail with FSS technology. FSS can sequence flat mail at a rate of approximately 16,500 pieces per hour. Scheduled to operate 17 hours per day, each machine will be capable of sequencing 280,500 mailpieces daily to more than 125,000 delivery addresses.

As we move toward national deployment of FSS, we are working closely with the mailing industry to make the most of this investment and achieve the lowest combined costs for handling flat-size mail, including developing new standards for optimal addressing. Unlike letter mail, which is fairly uniform in size and address location, flat mail covers a broad range of sizes and has highly variable address placement. We need new mailing standards for this diverse mailstream to promote consistent addressing for all flat-size pieces and ensure efficiency in

all flats processing and delivery operations.

Toward this goal, we are proposing new standards requiring mailers to use an 11-digit POSTNET barcode or Intelligent Mail barcode on all automation rate First-Class Mail, Periodicals, Standard Mail, and Bound Printed Matter flat-size pieces. Mailers must also place the address in the upper portion of all Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail flat-size pieces mailed at automation, presorted, or carrier route rates. Mailers may place the address parallel or perpendicular to the top edge, but not upside down as read in relation to the top edge. For bound or folded pieces not in envelopes or polywrap, the "top" of the mailpiece is the upper edge when the bound or final folded edge is vertical and on the right side of the piece. For enveloped or polywrapped pieces, the "top" is either of the shorter edges.

Mailers must address all presorted, carrier route, and automation flat-size mailpieces using a minimum of 8-point type. In addition, for all automation pieces, the lines and the characters in the address must not touch or overlap, and each element of the address line may be separated by no more than three blank character spaces.

The new standards will enable FSS to process flat-size pieces in delivery sequence at high speeds and reduce the time carriers spend manually sorting flat-size mail. The new standards further increase efficiency by ensuring that carriers need not reorient flat-size pieces to read the address, whether the mail is held, pulled from a mailbag, or removed from a tray.

As we transition to the automated flats processing environment, the Intelligent Mail barcode provides opportunities for mailers to save space within the address block. For example, mailers can include all tracking and routing information and avoid reproducing human-readable ACS codes and keylines. In addition, to further mitigate the larger type size requirements, we are looking at ways to shorten optional endorsement lines and allow mailers to place mailer-specified information (such as customer numbers) to the left of the optional endorsement line when OneCode ACS is used. We may also be able to reduce the amount of clear space required under the Intelligent Mail barcode. We will publish these changes in a future revision. For other ways to reduce address block size, refer to Publication 28, *Postal Addressing Standards* (available on Postal Explorer at [pe.usps.com](http://pe.usps.com); click on "Address

Quality" in the left frame, then "Address Management Publications").

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

\* \* \* \* \*

**300 Discount Mail: Flats**

\* \* \* \* \*

**302 Elements on the Face of a Mailpiece**

**1.0 All Mailpieces**

\* \* \* \* \*

[Revise 1.2 as follows:]

**1.2 Delivery Address**

The delivery address specifies the location to which the USPS is to deliver a mailpiece. Except for mail prepared with detached address labels under 602.4.0, the piece must have the address of the intended recipient, visible and legible, only on the side of the piece bearing postage. Use at least 8-point type (8-point type is approximately 1/10-inch high). An Arial font is preferred. Additional standards apply to presorted, automation-compatible, and carrier route rate flats mailed at First-Class Mail, Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail rates (see 2.0).

\* \* \* \* \*

[Re number 2.0 through 4.0 as 3.0 through 5.0. Insert new 2.0 as follows:]

**2.0 Address Placement**

**2.1 Basic Standards**

On all Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail flats mailed at presorted,

automation, or carrier route rates, mailers must place the address block at least 1/8 inch from any edge of the mailpiece. For the purposes of these standards, the "address block" is defined as the recipient's name or other identification; the company information line; the street and number, and any necessary secondary information; and the city, state, and ZIP Code. The address may appear on the front or the back of the mailpiece (but must be on the side bearing postage), parallel or perpendicular to the top edge, but it cannot be upside down as read in relation to the top edge. See 2.2 for additional standards for enveloped or polywrapped pieces, and 2.3 for bound or folded pieces not in envelopes or polywrap.

**2.2 Address Placement on Enveloped or Polywrapped Pieces**

The following standards apply to enveloped or polywrapped Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail flats mailed at presorted, automation, or carrier route rates:

a. The "top" of the mailpiece is either of the shorter edges.

b. If the address is parallel to the top edge, the entire address block must appear within 3 inches of the top of the mailpiece. If the address is perpendicular to the top edge, one edge of the address block (either the first or last possible character) must be within 2 1/2 inches of the top of the mailpiece. See Exhibit 2.3.

c. On all pieces, the address block must be at least 1 inch closer to the top than to the bottom of the piece.

d. When the address is placed on an insert polywrapped with the host piece, the insert must be secured to maintain address placement throughout processing and delivery.

**2.3 Address Placement on Bound or Folded Pieces**

The following standards apply to bound or folded Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail flats mailed at presorted, automation, or carrier route rates not in envelopes or polywrap:

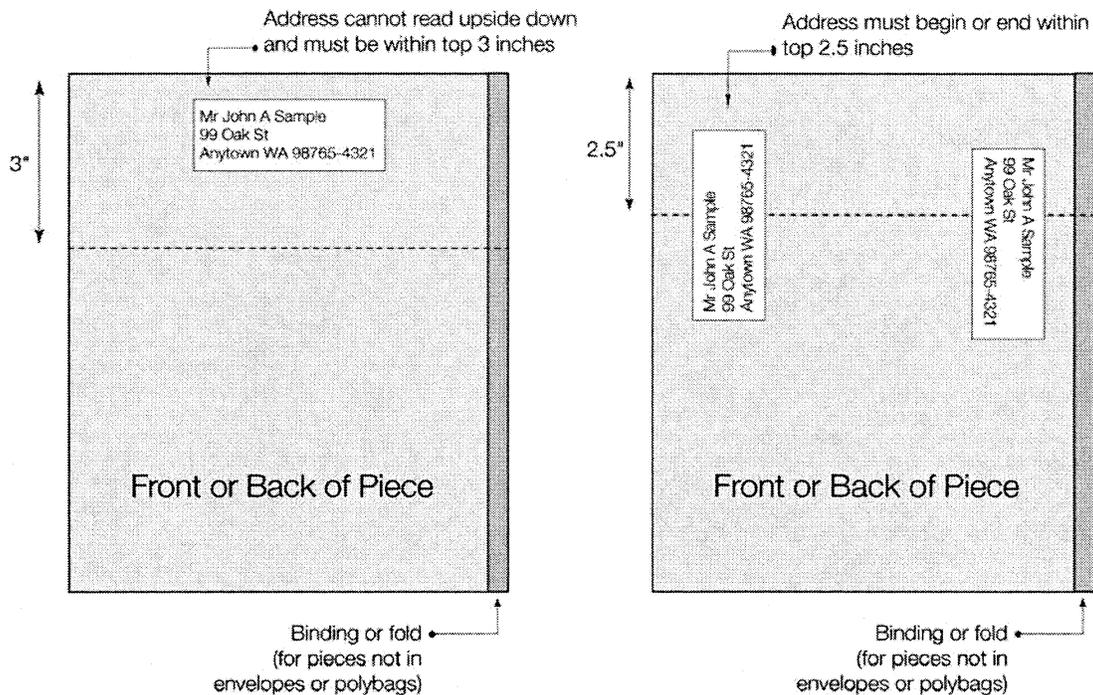
a. The "top" is the upper edge of the mailpiece when the bound or final folded edge is vertical and on the right side of the piece. Exception: For Carrier Route (or Enhanced Carrier Route) saturation rate pieces, the "top" of the mailpiece is either of the shorter edges.

b. If the address is parallel to the top edge, the entire address block must appear within 3 inches of the top of the mailpiece. If the address is perpendicular to the top edge, one edge

of the address block (either the first or last possible character) must be within 2½ inches of the top of the mailpiece. See Exhibit 2.3.

c. On all pieces, the address block must be at least 1 inch closer to the top than to the bottom of the piece.

**Exhibit 2.3 Address Placement**



**2.4 Type Size and Line Spacing**

On all First-Class Mail, Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail flats mailed at presorted, automation, or carrier route rates, mailers must print the address using at least 8-point type (8-point type is approximately 1/10-inch high). An Arial font is preferred. These additional standards apply to automation rate pieces:

a. The individual characters and the individual lines in the address cannot touch or overlap. A minimum 0.028-inch clear space between lines is preferred.

b. Each element on each line of the address may be separated by no more than three blank character spaces. For example, "ANYTOWN U.S. 12345," not "ANYTOWN U.S. 12345."

\* \* \* \* \*

**5.0 Barcode Placement**

[Revise heading and text of renumbered 5.1 to require 11-digit POSTNET barcodes when a POSTNET barcode is used on automation flat-size pieces, as follows:]

**5.1 Basic Standards**

On any flat-size piece claimed at automation rates (including machinable

barcoded Periodicals rates), the piece must bear one 11-digit POSTNET barcode under 5.3 or it may bear two 11-digit POSTNET barcodes under 5.4. Other mailer-applied non-USPS barcodes may appear on the address side of the piece if the barcode format is not detectable by automated postal equipment as a routing code. Automation rate flat-size pieces must not bear a 5-digit or a ZIP+4 barcode.

[Further renumber 5.5, DPBC Numeric Equivalent, as new 5.2. Renumber 5.2 through 5.4 as 5.3 through 5.5.]

\* \* \* \* \*

[Delete renumbered 5.5, 5-Digit and ZIP+4 Barcode Permissibility. Further renumber 5.6 and 5.7 as 5.5 and 5.6.]

\* \* \* \* \*

**330 First-Class Mail**

**333 Rates and Eligibility**

\* \* \* \* \*

**5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Flats**

**5.1 Basic Standards for Automation First-Class Mail**

All pieces in a First-Class Mail automation rate mailing must:

\* \* \* \* \*

[Revise item e to require 11-digit POSTNET barcodes or Intelligent Mail barcodes as follows:]

e. Bear an accurate 11-digit POSTNET barcode or Intelligent Mail barcode with a delivery point routing code (either on the piece or on an insert showing through a window) meeting the standards in 302.5.0, Barcode Placement, and 708.4.0, Standards for POSTNET and Intelligent Mail Barcodes.

\* \* \* \* \*

**5.4 Address Standards for Barcoded Pieces**

\* \* \* \* \*

**5.4.4 Address Elements**

[Add a new last sentence to 5.4.4 to reference the address placement standards as follows:]

\* \* \* The address must appear on the piece according to 302.2.4.

\* \* \* \* \*

**340 Standard Mail**

**343 Rates and Eligibility**

\* \* \* \* \*

**7.0 Additional Eligibility Standards for Automation Rate Standard Mail Flats**

**7.1 General**

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation rate mailing must:

*[Revise item e to require 11-digit POSTNET barcodes or Intelligent Mail barcodes as follows:]*

e. Bear an accurate 11-digit POSTNET barcode or Intelligent Mail barcode with a delivery point routing code (either on the piece or on an insert showing through a window) meeting the standards in 302.5.0, *Barcode Placement*, and 708.4.0, *Standards for POSTNET and Intelligent Mail Barcodes*.

\* \* \* \* \*

**7.3 Address Standards for Barcoded Pieces**

\* \* \* \* \*

**7.3.4 Address Elements**

*[Add a new last sentence to 7.3.4 to reference the address placement standards as follows:]*

\* \* \* The address must appear on the piece according to 302.2.0.

\* \* \* \* \*

**360 Bound Printed Matter**

**363 Rates and Eligibility**

\* \* \* \* \*

**6.0 Additional Eligibility Standards for Barcoded Bound Printed Matter Flats**

**6.1 General**

*[Revise 6.1 to require 11-digit POSTNET barcodes or Intelligent Mail barcodes as follows:]*

The barcode discount applies only to BPM flat-size pieces that bear a correct, readable 11-digit POSTNET barcode under 708.4.0, *Standards for POSTNET and Intelligent Mail Barcodes*, for the numeric DPBC of the delivery address. Instead of a POSTNET barcode, pieces may bear Intelligent Mail barcodes (under 708.4.0) containing a delivery point routing code for the delivery address. The pieces must be part of a nonpresorted rate mailing of 50 or more flat-size pieces or part of a presorted rate mailing of at least 300 BPM flat-size pieces prepared under 705.8.0, *Preparing Pallets*, and 365.7.0, *Preparing Barcoded Flats*. The barcode discount is not available for flat-size pieces mailed at Presorted DDU rates or carrier route rates. To qualify for the barcode discount, the flat-size piece must meet the standards in 301.3.0,

*Additional Criteria for Automation Flats.*

\* \* \* \* \*

**6.3 Address Standards for Barcode Discount**

\* \* \* \* \*

**6.3.4 Address Elements**

*[Add a new last sentence to 6.3.4 to reference the address placement standards as follows:]*

\* \* \* The address must appear on the piece according to 302.2.0.

\* \* \* \* \*

**370 Media Mail**

**373 Rates and Eligibility**

\* \* \* \* \*

**3.0 Rate Eligibility for Media Mail Flats**

\* \* \* \* \*

**3.3 Delivery and Return Addresses**

All Media Mail must bear a delivery address. The delivery address on each piece must include the correct ZIP Code or ZIP+4 code. The address must appear on the piece according to 302.2.0. Alternative addressing formats under 602.3.0 or detached address labels under 602.4.0 may be used. Each piece must bear the sender's return address.

\* \* \* \* \*

**380 Library Mail**

**383 Rates and Eligibility**

\* \* \* \* \*

**3.0 Rate Eligibility for Library Mail Flats**

\* \* \* \* \*

**3.3 Delivery and Return Addresses**

All Library Mail must bear a delivery address. The delivery address on each piece must include the correct ZIP Code or ZIP+4 code. The address must appear on the piece according to 302.2.0. Alternative addressing formats under 602.3.0 or detached address labels under 602.4.0 may be used. Each piece must bear the sender's return address.

\* \* \* \* \*

**700 Special Standards**

\* \* \* \* \*

**707 Periodicals**

\* \* \* \* \*

**3.0 Physical Characteristics and Content Eligibility**

\* \* \* \* \*

**3.2 Addressing**

**3.2.1 General**

*[Revise 3.2.1 to require 11-digit POSTNET barcodes or Intelligent Mail barcodes on machinable barcoded flats as follows:]*

Each addressed piece, including the top copy of a firm bundle, must bear the addressee's name and address. The address must include the correct ZIP+4 code or 5-digit ZIP Code. Flat-size pieces mailed at the machinable barcoded rates must include the correct 11-digit POSTNET barcode or Intelligent Mail barcode (under 708.4.0) containing a delivery point routing code for the delivery address.

\* \* \* \* \*

**3.2.3 Address Placement**

*[Revise 3.2.3 to reference the new address placement standards as follows:]*

The delivery address must be clearly visible on or through the outside of the mailpiece, whether placed on a label or directly on the host publication, a component, or the mailing wrapper. If placed on the mailing wrapper, the address must be on a flat side, not on a fold. If a polybag is used, the address must not appear on a component that rotates within the bag, and the address must remain visible throughout the addressed component's range of motion. For flat-size pieces, mailers must follow the additional address placement and formatting standards in 302.2.0 and 302.5.0.

\* \* \* \* \*

*[Delete Exhibit 3.2.4, Address Placement for Periodicals.]*

\* \* \* \* \*

**3.3 Permissible Mailpiece Components**

\* \* \* \* \*

**3.3.10 Label Carrier**

A label carrier may be used to carry the delivery address for the mailpiece and must consist of a single unfolded, uncreased sheet of card or paper stock, securely affixed to the cover of the publication or large enough so that it does not rotate inside the wrapper, subject to these conditions:

\* \* \* \* \*

*[Insert new item e as follows:]*

e. For flat-size pieces, mailers must follow the additional address placement and formatting standards in 302.2.0 and 302.5.0.

\* \* \* \* \*

**13.0 Carrier Route Rate Eligibility****13.1 Basic Standards**

\* \* \* \* \*

**13.1.2 Address Quality**

All pieces in a Periodicals carrier route rate mailing must bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

\* \* \* \* \*

*[Insert new item d as follows:]*

d. For flat-size pieces, mailers must follow the additional address placement and formatting standards in 302.2.0 and 302.5.0.

\* \* \* \* \*

**14.0 Barcoded (Automation) Rate Eligibility****14.1 Basic Standards****14.1.1 General**

All pieces in a Periodicals barcoded (automation) rate mailing must:

\* \* \* \* \*

*[Revise item b as follows:]*

b. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code, and that meets these address quality standards:

\* \* \* \* \*

c. Bear an accurate barcode meeting the standards in 708.4.0, under these conditions:

\* \* \* \* \*

*[Revise item c2 to require 11-digit POSTNET barcodes or Intelligent Mail barcodes as follows:]*

2. If a flat: The mailer may use an 11-digit POSTNET or an Intelligent Mail barcode with a delivery point routing code, under 708.4.0. Mailers may apply the barcode either on the piece or on an insert showing through a window.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. E7-19932 Filed 10-9-07; 8:45 am]

**BILLING CODE 7710-12-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants: Eastern New York Chapter of the Nature Conservancy, Enhancement of Survival Permit**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Availability and Receipt of Application; Request for Comments.

**SUMMARY:** The Eastern New York Chapter of The Nature Conservancy (TNC) has applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival Permit (ESP) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (Act), as amended. The requested permit, which is for a period of 50 years, includes a draft Safe Harbor Agreement (SHA) for the Karner blue butterfly in portions of Albany, Saratoga, Schenectady, and Warren Counties, New York.

A draft Environmental Assessment (EA), pursuant to the National Environmental Policy Act of 1969 (NEPA), is also available for public review. We are requesting comments on this application.

**DATES:** Written comments on the permit application, SHA, and EA must be received on or before November 9, 2007.

**ADDRESSES:** Please address comments to Field Office Supervisor, New York Field Office, 3817 Luker Road, Cortland, New York 13045; facsimile 607-753-9699. Please refer to permit TE162713-0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** David Stilwell or Robyn Niver at the New York Field Office (see **ADDRESSES** above), telephone 607-753-9334; facsimile 607-753-9699, or [Robyn\\_Niver@fws.gov](mailto:Robyn_Niver@fws.gov).

**SUPPLEMENTARY INFORMATION:****Document Availability**

Individuals wishing copies of the permit application or the draft EA, or copies of the full text of the proposed SHA, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit. Further, we solicit information regarding the adequacy of the SHA as

measured against our permit issuance criteria found in 50 CFR 17.22(c).

Before including your address, telephone number, electronic mail address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Background**

TNC has applied to the Service for a section 10(a)(1)(A) ESP for the endangered Karner blue butterfly in portions of 4 eastern New York counties (Albany, Saratoga, Schenectady, and Warren) for a period of 50 years.

TNC plans to implement a programmatic SHA program on non-Federal and non-TNC lands in eastern New York to promote the recovery of the Karner blue butterfly on enrolled private lands located in the counties listed above. The conservation measures will improve and maintain pitch pine scrub oak barrens oak-pine savannahs, and tall grass prairie openings through mowing, tree clearing, and grubbing, removal of debris, prescribed burning, limited use of herbicides, and planting seeds or seedlings by hand or mechanical equipment. TNC may also employ captive-rearing and translocation methods to enhance butterfly colonization of sites. Due to the programmatic nature of the SHA, baseline conditions will be determined at the time of enrollment. Baseline conditions for most properties are anticipated to be zero. Where properties are determination to have an environmental baseline greater than zero, these areas shall be described in the cooperative agreement between TNC and the property owner, with detailed descriptions and maps showing the locations of existing habitat attached to the cooperative agreement.

Under an SHA, a participating property owner voluntarily undertakes management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subject to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property.

The draft EA considers the environmental consequences of three alternatives, including a no-action alternative, the proposed action, and an alternative involving individual SHAs with the Service.

**Decision**

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, the proposed SHA,

and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Action and NEPA regulations. If the requirements are met, we will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to TNC for take of Karner blue butterfly incidental to otherwise lawful activities of the project. We will not make a final decision until after the end of the 30-day comment period and will fully

consider all comments received during the comment period.

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

Dated: August 24, 2007.

**Thomas J. Healy,**

*Acting Regional Director, Region 5.*

[FR Doc. E7-19882 Filed 10-9-07; 8:45 am]

**BILLING CODE 4310-55-P**

# Notices

Federal Register

Vol. 72, No. 195

Wednesday, October 10, 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

### Submission for OMB Review; Comment Request

October 3, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

### Forest Service

*Title:* Publications Evaluation Card.

*OMB Control Number:* 0596-0163.

*Summary of Collection:* Executive Order 12862 issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector, and to establish and implement customer service standards to carry out principles of the National Performance Review. In response to this Executive Order, the Forest Service (FS) Southern Research Station developed a "Publication Comment" Card for inclusion when distributing scientific research publications. FS has come to realize that some changes in their publications may be necessary to achieve their goals and wishes to elicit voluntary feedback from their readers to help determine the changes to make. FS will collect information using the comment card.

*Need and Use of the Information:* FS will collect information, which will ask the respondents to rate the publication that they received or read. The information will be used to improve the readability and usefulness of FS articles, papers, and books. The collected information also helps scientists and authors provide relevant information on effective, efficient, responsible land management. If the information is not collected FS will forgo any opportunity to learn if publications meet customers' expectations and address customer's needs.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 72,000.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 4,800.

### Forest Service

*Title:* Homeowner Response to Wildfire Hazard Mitigation Incentives: What Works and What Doesn't.

*OMB Control Number:* 0596-NEW.

*Summary of Collection:* This project assists the Forest Service in implementing the Healthy Forest Restoration Act (Act), Pub. L. 108-148, by supporting development of Community Wildfire Protection Plans as

required under this Act. According to federal land managers, the cost of protecting private property in areas near public forests, known as the wildland-urban interface (WUI), is growing rapidly. The Forest Service would like to find ways to help local communities share the responsibility for community fire protection.

*Need and Use of the Information:* Information will be collected from homeowners in high-risk WUI areas in four different locations. A self-administrated mail survey questionnaire will be sent to participating homeowners asking about their knowledge and understanding of local wildfires, their own efforts to protect their homes, why they do or do not comply with local guidelines and laws, and the effectiveness and fairness of local wildfire protection programs and programs of other communities. The information will be used to prepare guidance materials to help local community's structure local defensible space policies and promotional materials. Results will be used to develop a matrix of options intended to assist policy makers, resource managers, community officials, and residents in determining and initiating the most effective and efficient wildland fire abatement programs for their jurisdictions.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 2,000.

*Frequency of Responses:* Reporting: One time.

*Total Burden Hours:* 500.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E7-19873 Filed 10-9-07; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2007-0093]

### Notice of Request for Extension of Approval of an Information Collection; Chronic Wasting Disease in Cervids; Payment of Indemnity

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the payment of indemnity for the voluntary depopulation of captive cervid herds known to be affected with chronic wasting disease.

**DATES:** We will consider all comments that we receive on or before December 10, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2007-0093 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2007-0093, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0093.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** For information on regulations for the payment of indemnity for the voluntary depopulation of captive cervid herds known to be affected with chronic wasting disease, contact Dr. Dean

Goeldner, Chronic Wasting Disease Program Manager, Ruminant Health Programs, NCAHP, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737; (301) 734-4916. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

**SUPPLEMENTARY INFORMATION:**

*Title:* Chronic Wasting Disease in Cervids; Payment of Indemnity.

*OMB Number:* 0579-0189.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry.

In connection with this mission, APHIS established regulations to provide for the payment of indemnity by USDA for the voluntary depopulation of captive cervid herds known to be affected with chronic wasting disease (CWD).

CWD is a transmissible spongiform encephalopathy of cervids (elk, deer, and other members of the deer family) and is typified by chronic weight loss leading to death. The presence of CWD in cervids causes significant economic and market losses to U.S. producers.

The regulations in 9 CFR part 55 authorize the payment of indemnity for the voluntary depopulation of CWD-positive, -exposed, or -suspect captive cervids. In order to take part in the indemnity program, cervid producers must apply for participation, must sign a payment, appraisal, and agreement form, and must certify as to whether any other parties hold mortgages on the herd. These requirements involve the use of two information collection instruments: An Appraisal/Indemnity Claim Form (VS Form 1-23) and a Herd Plan Agreement.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- (2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Cervid herd owners; State personnel who perform appraisal and herd plan work.

*Estimated annual number of respondents:* 10.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 10.

*Estimated total annual burden on respondents:* 10 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of October 2007.

**Cindy J. Smith,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-19883 Filed 10-9-07; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Apache-Sitgreaves National Forests, Apache, Greenlee and Navajo Counties, AZ; Apache-Sitgreaves National Forests Public Motorized Travel Management Plan

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service proposes to designate which routes (roads and trails) and areas on federal lands administered by the Forest Service within the Apache-Sitgreaves National Forests (Forests) are open to motorized travel. In doing so, the agency will comply with the requirements of the

Forest Service 2005 Travel Management Rule. The Forest Service will produce a Motorized Vehicle Use Map (MVUM) that reveals those routes and areas on the Apache-Sitgreaves National Forests that are open to motorized travel. The MVUM will be the primary tool used to determine compliance and enforcement with motor vehicle use designations on the ground. Existing routes, user-created routes and areas not designated as open on the MVUM will be legally closed to motorized travel except as allowed by permit or other authorization. Cross-country motorized travel will be prohibited except by special permit. The decisions on motorized travel do not include over-snow travel or existing winter-use recreation.

**DATES:** Comments concerning the scope of the analysis must be received by January 11, 2008. The draft environmental impact statement is expected to be released in September 2008, and the final environmental impact statement is expected in December 2008.

**ADDRESSES:** Send written comments to Travel Management, Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938. Electronic comments may be sent to *comments-southwestern-apache-sitgreaves@fs.fed.us* with "Travel Management" in the subject line. Electronic comments must be readable in Microsoft Word (.doc), rich text (.rtf), Portable Document Format (pdf), text (.txt), or hypertext markup language (.html).

**FOR FURTHER INFORMATION CONTACT:** Jim Copeland, Team Leader at (928) 333-4301/(928) 339-4384.

#### **Purpose and Need for Action**

The purpose of this action is to improve management of motorized (36 CFR 212.1, *Motor Vehicle*) vehicle travel on National Forest System (NFS) lands within the Apache-Sitgreaves National Forests (Forests) in accordance with provisions identified in 36 CFR parts 212, 251, 261, and 295 *Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule*. Currently, wheeled motorized vehicle travel by the public is not prohibited off designated routes except by signed Forests Orders. The number of user created routes continues to grow each year, with many routes having environmental impacts and safety concerns that have not been addressed. Therefore, there is a need to manage the Forests' transportation system in a sustainable manner through designation of NFS roads, motorized NFS trails, and areas for motor vehicle use, and the

prohibition of motorized cross-country travel (except by permit or special order).

#### **Proposed Action**

The proposed action is to designate roads, trails, and areas open to motorized travel on lands administered by the Apache-Sitgreaves National Forests (Forests). Where it is appropriate and necessary, the designations will also specify seasons of use, type of vehicle(s) permitted, and types of use for those roads, trails, and areas. In doing so, the Forests will comply with requirements of the Forest Service 2005 Travel Management Rule (36 CFR part 212). As a result of these travel management decisions, the Forests will produce a Motorized Vehicle Use Map (MVUM) depicting those routes and areas on the Apache-Sitgreaves National Forests that are open to motorized travel. The MVUM will be the primary tool used to determine compliance and enforcement with motor vehicle use designations on the ground. Existing routes, user-created routes and areas not designated as open on the MVUM will be legally closed to motorized travel except as allowed by permit or other authorization. Cross-country motorized travel will be prohibited except by special permit.

In order to implement the proposed action, it would be necessary to amend some existing direction and terminology in the 1987 *Apache-Sitgreaves National Forests Plan*, as amended. These changes to the Forests Plan direction would be enduring changes and would apply to this decision and all subsequent project decisions unless and until further modified.

Proposed travel management-related changes to the Forests Plan are based on elements of the travel management rule, public meeting comments, District and Core Travel Management Team recommendations, and Forests Leadership Team decisions. The goal is to provide a transportation system that is within the Forests' ability to manage (operate and maintain) and provide a variety of users with a diverse experience while minimizing impacts to natural resources.

The Forests transportation system open to motorized travel under this proposal would be approximately 2,892 miles. This is a change of approximately 56 miles from the existing condition of approximately 2,948 open miles. In addition, hundreds of miles of currently used closed roads (roads identified as closed in the Forests' database) and user created roads not identified as open under this proposal would no longer be open to motorized use. New project

decisions, subsequent to this decision could change this system without amending the Forests Plan.

The proposed transportation system was developed with extensive public input and addresses a variety of concerns, including access to private lands within the National Forests boundary, funding, and access to the Forests for motorized and non-motorized recreation. Specifically, this proposed transportation system would allow for a balance between various recreational and commercial uses of the Forests. It would provide for various forms of reasonable motorized use on a designated system of routes in a responsible manner that addresses multiple resource concerns.

The proposed transportation system is depicted in detail on the *Apache-Sitgreaves National Forests Travel Management Plan Proposed Action Map* located on the Forests Web Site:

<http://www.fs.fed.us/r3/asnf/projects/travel-management.shtml>. In addition, maps will be available for viewing at:

Supervisor's Office, 30 South Chiricahua St., Springerville, AZ.

Alpine Ranger District, Junction Hwy 180 & 191, Alpine, AZ.

Black Mesa Ranger District, 2748 E.

Hwy 260, Overgaard, AZ.

Clifton Ranger District, 397240 AZ 75, Duncan, AZ.

Springerville Ranger District, 165 S.

Mountain Ave., Springerville, AZ.

Lakeside Ranger District, 2022 W. White Mountain Blvd., Lakeside, AZ.

Other existing routes not shown on this map would not be open to public motorized travel. New routes would not be created except by written decision of an authorized Forest Service official. Unauthorized new routes would not be approved for public travel. If this proposal is selected for implementation, the information on this map would become the Motor Vehicle Use Map (MVUM) required by regulation and agency policy.

Under this proposal most of the route mileage would occur on existing National Forest System (NFS) routes currently open to the public for motorized travel. This proposal also includes designation of some currently unauthorized routes to connect existing NFS routes.

Approximately 8 miles of NFS roads would be designated for mixed-use as "roads open to all vehicles." NFS roads not considered for mixed-use would be designated as "roads open to highway legal vehicles only" (2,627 miles), or "routes open only to vehicles 50" or "less in width" (257 miles).

This proposal would allow cross-country motorized game retrieval, up to

1 mile from a designated route, of legally harvested elk and mule deer during certain seasons, in certain Game Management Units, during certain times of the day. This proposal would also allow CHAMP permit holders the ability for cross-country motorized game retrieval, up to 1 mile from a designated route, of legally harvested elk, mule deer, and black bear. Cross-country motorized big game retrieval (MBGR) will be subject to other existing regulations intended to protect natural and/or heritage resources. This includes compliance with regulations addressing use of vehicles off roads (36 CFR 261.15), National Forest Wilderness (36 CFR 261.18), and National Forest Primitive Areas (36 CFR 261.21), as well as other applicable laws and regulations. No MBGR will be allowed in Wilderness or Primitive Areas. The intent of this segment of the proposal is to reduce spoilage and waste by providing reasonable access to downed animals that are difficult to move long distances without motorized assistance. Motorized cross-country retrieval of other game animals would not be allowed under this proposal because these animals are small enough to retrieve without motorized assistance. This proposal is consistent with 36 CFR 212.51(8)(b) and the recommendation from Arizona Game and Fish Department.

This proposal would allow forest products gathering, such as firewood and pinyon nuts, following Regional Office guidelines for Forestry Program Activities. Motorized cross-country travel to facilitate the gathering of forest products will be managed by the Forests product permit system. The permit issued for gathering of forest products will specify what, if any, motorized cross-country travel is authorized for the purposes of gathering those products. Removal of lighter forest products such as plants, plant parts, dry cones, grasses, grass seed, pinyon seed, herbs and edibles, mistletoe and mushrooms, would not generally require motorized cross-country travel, and motorized cross-country travel would not generally be authorized. Tribal rights would be honored through free permits.

This proposal would allow dispersed camping off designated routes, in certain areas, under certain conditions. In all cases where dispersed camping is allowed, motorized vehicles would be restricted to within 300 feet from the centerline of designated routes, using the most direct route to the camp site. This would allow for reasonable recreational use of the Forests while reducing the potential for resource damage. Designated routes along which

dispersed camping would be allowed will be shown on the MVUM.

This proposal would allow dispersed camping at designated dispersed campsites, in certain areas, under certain conditions. In all cases where camping at designated dispersed campsites is allowed, motor vehicles would be restricted to within 100 feet from the sign designating the dispersed campsite. Motor vehicles would use the most direct route to the campsite. This would allow for reasonable recreational use of the Forests while reducing the potential for resource damage. Designated dispersed campsites will be shown on the MVUM.

Under this proposal, off-road parking would be allowed along designated routes under certain conditions. Primary considerations in designating this policy were user safety and resource protection. Draft Forest Service Manual direction would allow parking off designated routes, not to exceed a distance of one vehicle length.

This proposal would allow cross-country motorized travel in seven designated Areas that total approximately 1,433 acres. This would allow for reasonable recreational use of the Forests while reducing the potential for resource damage. Designated cross-country travel Areas will be shown on the MVUM.

#### Responsible Official

The Responsible Official is Elaine Zieroth, Forests Supervisor, Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938.

#### Nature of Decision To Be Made

Based on the purpose and need for the proposed action, the Forests Supervisor will evaluate the Proposed Action and other alternatives in order to decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to the existing Apache-Sitgreaves National Forests transportation system. Once the decision is made, the Apache-Sitgreaves National Forests will publish a Motor Vehicle Use Map identifying the roads, trails, and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Federal land managers are directed (Executive Order 11644, 36 CFR 212, and 43 CFR 8342.1) to provide for public use of routes designated as open, to ensure that the use of motorized vehicles and off-road vehicles will be controlled and directed so as to protect the resources of those lands under their

authority, to promote the safety of users, and to minimize conflicts among various users of federal lands.

#### Public Involvement

Preliminary public involvement was initiated in June, 2006, in an effort to familiarize the public and stakeholders with the objectives of travel management. The Apache-Sitgreaves National Forests hosted and participated in numerous public meetings and workshops across the Forests and local communities.

The National Off-Highway Vehicle Conservation Council (NOHVCC) in cooperation with the Apache-Sitgreaves National Forests conducted OHV Route Designation Workshops November 16–19, 2006 in Show Low, AZ for agency personnel and the public. The purpose of these workshops was to assist the Forest Service and public in effective implementation of the USFS Travel Management Rule.

The public was also asked to provide input to the Forests on routes they wanted to remain open and/or closed or those routes that may be in conflict with other desired conditions. Initial public involvement continues up to the point that this NOI is published in the **Federal Register**. To date, the Forests have received over 7,000 comments including numerous comments on individual routes, a large number of general comments, and some area-wide comments. This preliminary public input has been invaluable in helping the Forests develop this proposed action. A summary of the comments received to date is posted on the Forests Web Site <http://www.fs.fed.us/r3/asnf/projects/travel-mangement.shtml>.

#### Scoping Process

Public participation will be especially important at several points during the analysis. The Forests will be seeking information, comments, and assistance from Federal, State, and other local agencies and other individuals or organizations that may be interested in or affected by the proposed action. The Forests will conduct meetings to solicit comments from the public and interested parties on this proposal. The meetings are scheduled from 5 p.m. to 8 p.m. at the following locations:

Lakeside, AZ—November 6, 2007

(Tuesday), Blue Ridge Junior High School Cafeteria, 1200 West White Mountain Blvd.

Eagar, AZ—November 7, 2007

(Wednesday), Eagar Town Hall, 22 West 2nd St.

Clifton, AZ—November 8, 2007

(Thursday), Clifton Community

Center, Clifton Train Depot, 100 North Coronado Blvd (U.S. Highway 191). Overgaard, AZ—November 13, 2007, (Tuesday), Rim Country Senior Center, 2171 B Street.

Alpine, AZ—November 14, 2007, (Wednesday), Alpine Community Center, 42661 U.S. Highway 180.

Notices of these meetings and requests for comments will be posted on the Forests Web Site and will be published in local newspapers of record.

Based on comments received as a result of this notice and after the Forests have conducted public meetings and afforded the public sufficient time to respond to the proposed action, the Forests will use the public scoping comments and resource related input from the interdisciplinary team and other agency resource specialists to develop a set of significant issues to carry forward into the environmental analysis process. The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September, 2008. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45 days from the date the EPA notice appears in the **Federal Register**. At that time, the draft EIS will be posted on the Forests Web Site and copies will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Apache-Sitgreaves National Forest participate at that time. Those who provide comments during the official 45-day comment period are eligible to appeal the decision under 36 CFR part 215. Interest expressed or comments provided on this project prior to or after the close of the official comment period will not constitute standing for appeal purposes. Comments must meet the requirements of 36 CFR 215.6.

The final EIS is scheduled to be completed in January, 2009. In the final EIS, the Forests are required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision.

#### **Preliminary Issues**

The Forests have received some indications of potential issues from the initial public involvement process. Those potential issues include:

(1) Resource damage caused by inappropriate types of vehicle use, (e.g. motorized vehicles in fragile or steep terrain); proliferation of routes (e.g. parallel trails or roads, continued traffic on closed roads and travel off designated routes); and continued use during seasonal restrictions (e.g. routes closed to protect resources during wet or muddy seasons).

(2) Disturbing or harming wildlife by using routes in important or critical wildlife habitat areas, too many roads in wildlife habitat areas, and disturbances to wildlife during critical lifecycle periods.

(3) Concerns about recreational opportunities, including loss of recreational opportunities if cross-country and existing routes are closed to motorized travel; loss of primitive or semi-primitive non-motorized recreation opportunities if more routes or areas are opened to motorized travel; and how to appropriately and reasonably accommodate the rapidly growing number of motorized users desiring to use federal lands for recreational riding of OHVs.

(4) Concerns on how the system might be designed to facilitate effective enforcement.

(5) Safety concerns on routes where multiple vehicle types (e.g. full-sized trucks and cars, ATVs, motorcycles) are allowed at the same time.

(6) Impacts to multiple use management of the Forests if routes are reduced.

The Forests recognize that this list of issues is not complete and will be further defined and refined as scoping continues. The Forests intend to develop a comprehensive list of significant issues before the full range of alternatives is developed and the environmental analysis is begun.

#### **Comment Requested**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement for the Apache-Sitgreaves National Forests Public Wheeled Motorized Travel Management Plan.

#### **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 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forests believe, 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 draft EIS comment period so that substantive comments and objections are made available to the Forests at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forests in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the 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: October 2, 2007.

**Robert S. Taylor,**

*Acting Forests Supervisor, Apache-Sitgreaves National Forests.*

[FR Doc. E7-19872 Filed 10-9-07; 8:45 am]

**BILLING CODE 3410-11-P**

**DEPARTMENT OF AGRICULTURE****Forest Service****Caribou-Targhee National Forest, Idaho; Smokey Canyon Mine, Panels F & G FEIS Update**

**AGENCY:** Forest Service, USDA.

**ACTION:** Revision of the Revised Notice of Intent to prepare an Environmental Impact Statement for the Smoky Canyon Mine Panels F & G Project, as published in the *Federal Register* pages 77118 to 77120 on December 29, 2005 (Vol. 70, No. 249). This revision includes a change of the project schedule.

**SUMMARY:** The USDA, Forest Service, DOI, Bureau of Land Management and Idaho Department of Environmental Quality prepared a Draft Environmental Impact Statement that documented the analysis and disclosed the environmental impacts of the proposed Smoky Canyon Mine, Panels F and G Project, a phosphate mine expansion. The DEIS was released for comment in December 2005 and a Notice of Availability was published in the *Federal Register* on December 29, 2005.

This revised Notice of Intent is to document a change in the schedule for the release of the FEIS. In the original NOI, dated September 15, 2003, the tentative date for release of the FEIS was September 2005; in the update to the NOI on December 29, 2005 the FEIS was scheduled for release in July, 2006. Due to scheduling changes, the release of the FEIS is now scheduled for October 2007.

**DATES:** A FEIS is expected to be completed by the end of October, 2007.

**ADDRESSES:** For further information, mail correspondence to Jeff Jones, Team Leader, Caribou-Targhee National Forest, 4350 Cliff Drive, Pocatello, ID 83204 or telephone (208) 236-7572.

Dated: October 3, 2007.

**Lawrence Timchak,**

*Forest Supervisor.*

[FR Doc. 07-4972 Filed 10-09-07; 8:45 am]

**BILLING CODE 3410-11-M**

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Vessel Monitoring System Requirements in the Western Pacific Pelagic Longline Fishery.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0441.

*Type of Request:* Regular submission.

*Burden Hours:* 399.

*Number of Respondents:* 164.

*Average Hours per Response:* One second.

*Needs and Uses:* The commercial fishing vessels active in the Hawaii-based pelagic longline fishery must allow National Marine Fisheries Service (NMFS) to install vessel monitoring system (VMS) units on their vessel when directed to do so by NMFS enforcement personnel. VMS units automatically send periodic reports on the position of the vessel. NMFS uses the reports to monitor the vessel's location and activities while enforcing area closures. NMFS pays for the installation and maintenance of the units and messaging.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually and hourly.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: October 3, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7-19859 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-P**

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Foreign Fishing Reporting Requirements.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0075.

*Type of Request:* Regular submission.

*Burden Hours:* 88.

*Number of Respondents:* 6.

*Average Hours per Response:* Weekly reports, 6 minutes; logbook reporting, 30 minutes for fishing vessels; and 8 minutes for transport vessels.

*Needs and Uses:* Foreign fishing activities are authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The collection of information from permitted vessels is necessary to monitor vessel activities and location for enforcement purposes. The reports are also necessary for fishery management purposes, monitoring the amounts of fish, if any, and permitted vessels harvest or receive from U.S. vessels in joint venture operations.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Weekly and on occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: October 3, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7-19860 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****Submission for OMB Review; Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DEPARTMENT OF COMMERCE****Submission for OMB Review; Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DEPARTMENT OF COMMERCE****Submission for OMB Review; Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).  
*Title:* An Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0500.

*Type of Request:* Regular submission.

*Burden Hours:* 50.

*Number of Respondents:* 12.

*Average Hours per Response:*

Observer applications; 15 minutes; observer appeals, 4 hours; observer providers' registrations for observer training and debriefing, observer assignments, and weekly deployment/logistics reports, 7 minutes; observer physicals and observer provider reports on observer harassment, safety or performance concerns, 2 hours; notification of observer physicals, 2 minutes.

*Needs and Uses:* National Marine Fisheries Service (NMFS) At-Sea Hake Observer Program defines observer duties, trains and debriefs observers, and manages data and release. The observers, deployed aboard at-sea processing vessels in the U.S. West Coast hake (a.k.a. whiting) fishery, are hired by observer providers who contract with the at-sea processors to provide the required observer coverage (50 CFR part 660). This data collection relates to the response time for observer providers and observers to register for training, debriefing or that have been issued suspension or decertification.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: October 3, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7-19861 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**U.S. Census Bureau**

**Proposed Information Collection; Comment Request; Manufacturers' Shipments, Inventories and Orders (M3) Supplement: 2006-2007 Unfilled Orders Benchmark Survey**

**AGENCY:** U.S. Census Bureau.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before December 10, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Chris Savage, U. S. Census Bureau, Room 7K071, Washington, DC 20233-6900, (301) 763-4832, or (via the Internet at [John.C.Savage@census.gov](mailto:John.C.Savage@census.gov)).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The "Manufacturers" Shipments, Inventories, and Orders (M3) Survey collects monthly data on shipments, inventories, and new and unfilled orders from manufacturing companies. The orders, as well as the shipments and inventory data, are valuable tools for those who analyze business cycle conditions, including members of the Council of Economic Advisers, the Treasury Department, and the business community.

The monthly M3 Survey estimates are based on a relatively small sample and reflect primarily the month-to-month changes of large companies. There is a clear need for periodic benchmarking of the M3 estimates to reflect the manufacturing universe. The Annual Survey of Manufactures (ASM) provides annual benchmarks for the shipments and inventory data in this monthly

survey. There is no benchmark for unfilled orders.

The U.S. Census Bureau plans to reinstate the Manufacturers' Shipments, Inventories and Orders (M3) Supplement: Unfilled Orders Benchmark Survey. Over the life of the M3 Survey, there have been three surveys specifically designed to collect unfilled orders. These surveys were conducted in 1976, 1986, and 2000. A periodic unfilled orders benchmark survey is necessary to determine the levels of unfilled orders for each industry covered in the M3 survey and whether to add or discontinue the collection of unfilled orders data for each industry.

The information will be used to develop universe estimates of unfilled orders as of the end of 2006 and 2007. We will adjust the monthly M3 data on unfilled orders to these levels on the North American Industry Classification System (NAICS) basis. The benchmarked unfilled orders levels will be used to derive estimates of new orders received by manufacturers.

**II. Method of Collection**

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 45 days of receipt. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

**III. Data**

*OMB Control Number:* 0607-0561.  
*Form Number:* MA-3000.  
*Type of Review:* Regular submission.  
*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 6,000.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 3,000.

*Estimated Total Annual Cost:* \$78,780.

*Respondent's Obligation:* Mandatory.  
*Legal Authority:* Title 13, U.S.C., Section 182.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 3, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7-19858 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-07-P

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**Action Affecting Export Privileges:  
Aviation Services International B.V.;  
Delta Logistics, B.V.; Robert Kraaijpoel;  
Niels Kraaijpoel; T.P.C B.V.; Mia Van  
Gemert; Mojir Trading; Reza Amidi;  
Lavantia, Ltd.; and Mita Zarek**

In the Matter of:

Aviation Services International B.V., P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

Aviation Services International B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL.

Delta Logistics B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL.

Delta Logistics B.V., P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

Robert Kraaijpoel, P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

Robert Kraaijpoel, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL.

Robert Kraaijpoel, P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

Niels Kraaijpoel, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL.

T.P.C. B.V., P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

T.P.C. B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL.

T.P.C. B.V., P.O. Box 11 1700AA, Heerhugowaard, Netherland.

Mia Van Gemert, P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

Mia Van Gemert, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL.

Mojir Trading, PO Box 18118, Jabel-Ali Free Zone, Dubai-UAE.

Reza Amidi, PO Box 18118, Jabel-Ali Free Zone, Dubai-UAE.

Lavantia Ltd., 16 Kyrakou Matsi Ave, 3rd Floor, 1082 Nicosia, Cyprus.

Mita Zarek, 16 Kyrakou Matsi Ave, 3rd Floor, 1082 Nicosia, Cyprus.

Respondents.

**Order Temporarily Denying Export Privileges**

Pursuant to Section 766.24 of the Export Administration Regulations ("EAR")<sup>1</sup>, the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I issue an Order temporarily denying the export privileges under the EAR of:

(1) AVIATION SERVICES INTERNATIONAL B.V., Fleming Straat 36, 1704 SL, Heerhugowaard, the Netherlands, and P.O. Box 418, Heerhugowaard, Netherlands 1700 ("ASI").

(2) TPC, B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 11, 1700AA Heerhugowaard, Netherlands and P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

(3) DELTA LOGISTICS, B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 11, 1700AA Heerhugowaard, Netherlands.

(4) ROBERT KRAAIJPOEL, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL, and P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

(5) NIELS KRAAIJPOEL, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

(6) MIA VAN GEMERT, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 418, Heerhugowaard, Netherlands 1700AK.

(7) MOJIR TRADING, P.O. Box 18118, Jabel-Ali Free Zone, Dubai-UAE.

(8) REZA AMIDI, P.O. Box 18118, Jabel-Ali Free Zone, Dubai-UAE.

(9) LAVANTIA, Ltd., 16 Kyrakou Matsi Ave., 3rd Floor, 1082 Nicosia, Cyprus.

(10) MITA ZAREK, 16 Kyrakou Matsi Ave., 3rd Floor, 1082 Nicosia, Cyprus. (hereinafter collectively referred to as the "Respondents") for 180 days.

On August 29, 2007, four of the Respondents, Aviation Services International, B.V. ("ASI") and its president, Robert Kraaijpoel, and TPC, B.V. and Delta Logistics, B.V., two companies owned and operated by Robert Kraaijpoel and his son, Niels Kraaijpoel, were criminally charged with

five counts of violations encompassing IEEPA, the Iranian Transactions Regulations ("ITR")<sup>2</sup> of the Treasury Department's Office of Foreign Assets Control ("OFAC"), and 18 U.S.C. 1001 and 2. The criminal complaint alleged that they participated in the willful export and attempted export to Iran of U.S. origin items during the 2006-2007 period without the required authorization from OFAC and made false statements in 2005 and 2006 to the U.S. Government regarding end-use and end-users in connection with the export of U.S. origin items. The complaint also alleged that Niels Kraaijpoel, ASI's sales manager, was aware of the U.S. embargo against Iran. The Respondents allegedly exported or attempted to export items through the Netherlands to Iran and concealed the true identity of the end-users.

In its request, BIS has presented evidence that shows that on two occasions in 2005 and 2006, the Respondents caused the export of items subject to the EAR and set forth on the Commerce Control List<sup>3</sup> from the United States to Netherlands and made false statements regarding end-use and end-users in connection with these transactions. Specifically, in November 2005 and January 2006, the Respondents caused receivers and video transmitters to be exported from the United States to the Netherlands. These items are subject to the EAR and are controlled for anti-terrorism reasons (ECCN<sup>4</sup> 5A991). The Respondents falsely claimed that the ultimate consignee was the Polish Border Control Agency ("PBCA") in Poland and that the items would be used by PBCA in Unmanned Air Vehicles ("UAVs"). The U.S. Government obtained information indicating that the PBCA did not own UAVs and therefore would have no need for this type of equipment. Further, the information demonstrated that the PBCA had never contracted with ASI for equipment of any kind. ASI provided this false information to the U.S. exporter who in turn included it on the Shipper's Export Declarations ("SEDs") it filed with the U.S. Government.

Subsequently, as alleged in the criminal complaint, in May 2007, in response to a request from the U.S. exporter for end-user information regarding spare parts to be provided for the electronic equipment previously purchased by ASI, an employee of ASI submitted an end-user statement from

<sup>2</sup> 31 CFR 560 (2007).

<sup>3</sup> 15 CFR Part 744, Supp.1 (2007).

<sup>4</sup> "ECCN" refers to "Export Control Classification Number." See Supp. 1 to 15 CFR 774.

<sup>1</sup> The EAR are currently codified at 15 CFR Parts 730-774 (2007). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§2401-2420 (2000)) ("EAA"). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 15, 2007 (72 FR 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)) ("IEEPA").

Lavantia, Ltd., a business purportedly located in Nicosia, Cyprus that is believed to serve as a purchaser of U.S.-origin items for Iranian businesses and governmental agencies.

Additionally, BIS has presented evidence that shows that the Respondents made false statements regarding end-use and end-users in connection with the causing of an attempted export of national security-controlled items to the Netherlands. The criminal complaint alleges that this shipment was actually an attempted unlawful export to Iran in violation of the ITR and IEEPA. Specifically, on or about March 30, 2007, a U.S. company attempted to ship polyimide film, an item subject to the EAR and controlled for national security reasons (ECCN 1C008.A.3), to Delta Logistics in the Netherlands. The shipment was detained when it was discovered that Delta Logistics was in fact ASI operating under a different name. When asked by the U.S. freight forwarder to provide an end-user statement, ASI's Robert Kraaijpoel refused. Robert Kraaijpoel subsequently represented to the U.S. exporter that he had a buyer for the item named Mojir Trading, located in Dubai, UAE. On or about July 9, 2007, the U.S. exporter received a purchase order and end-user statement purportedly from Mojir Trading's managing director stating that the polyimide film was destined for the UAE, and that the film would be used for sealing large electromotor fittings. The purchase order demonstrated that Delta Logistics B.V., a company owned by Niels Kraaijpoel and Robert Kraaijpoel, participated in this transaction. Following repeated efforts to contact Mojir Trading, the U.S. Government determined that there was no listing in the UAE for either the company or its purported managing director.

I find that the evidence presented by BIS demonstrates that the Respondents have knowingly violated the EAR, that such violations have been deliberate and covert, and that there is a likelihood of future violations, particularly given the nature of the transactions. For these reasons, I find that an imminent violation exists within the meaning of Section 766.24(b)(2). As such, a Temporary Denial Order ("TDO") is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subjects to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that a TDO naming Aviation Services International,

B.V., T.P.C, B.V., and Delta Logistics, B.V., in the Netherlands, and Lavantia, Ltd. in Cyprus, and Mojir Trading in the U.A.E., respectively, and Robert Kraaijpoel, Niels Kraaijpoel, Mia Van Gemert, Reza Amidi, and Mita Zarek, as Respondents is necessary, in the public interest, to prevent an imminent violation of the EAR. This Order is issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

*It is therefore ordered:*

*First*, that the Respondents, AVIATION SERVICES INTERNATIONAL B.V., Fleming Straat 36, 1704 SL, Heerhugowaard, the Netherlands, and P.O. Box 418, Heerhugowaard, Netherlands 1700, and T.P.C., B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 11, 1700AA Heerhugowaard, Netherlands and P.O. Box 418, Heerhugowaard, Netherlands 1700AK; and DELTA LOGISTICS, B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 11, 1700AA Heerhugowaard, Netherlands; and LAVANTIA, Ltd., 16 Kyriakou Matsi Ave, 3rd Floor, 1082 Nicosia, Cyprus; and ROBERT KRAAIJPOEL, Director and Principal Officer of Aviation Services International B.V., Fleming Straat 36, Heerhugowaard, Netherlands 1704SL, and P.O. Box 418, Heerhugowaard, Netherlands 1700AK; and NIELS KRAAIJPOEL, ASI Sales Manager, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 418, Heerhugowaard, Netherlands 1700AK; and MIA VAN GEMERT, Managing Director of ASI, Fleming Straat 36, Heerhugowaard, Netherlands 1704SL and P.O. Box 418, Heerhugowaard, Netherlands 1700AK; and MOJIR TRADING, PO Box 18118, Jabel-Ali Free Zone, Dubai-UAE; and REZA AMIDI, PO Box 18118, Jabel-Ali Free Zone, Dubai-UAE; and MITA ZAREK, owner of Lavantia Ltd., 16 Kyrakou Matsi Ave, 3rd Floor, 1082 Nicosia, Cyprus, (collectively the "Denied Persons"), may not, directly or indirectly, participate 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 Export Administration Regulations ("EAR"), or in any other activity subject to the EAR, 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 EAR, or in any other activity subject to the EAR; 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 EAR, or in any other activity subject to the EAR.

*Second*, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquire or attempt 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 Persons of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the EAR 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 EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third*, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Denied Persons 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.

*Fourth*, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request with the Assistant Secretary not later than 20 days before the expiration date and serving the request on the Respondents. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**.

This Order is effective upon date of publication and shall remain in effect for 180 days.

Entered this 1st day of October, 2007.

**Darryl W. Jackson,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 07-4995 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-DT-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Saltonstall-Kennedy Grant Program (S-K Program) Applications and Reports

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before December 10, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW.,

Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Stephen Aguzin, 301-713-2358 or [Stephen.Aguzin@noaa.gov](mailto:Stephen.Aguzin@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The S-K Program provides financial assistance on a competitive basis for research and development projects that benefit the U.S. fishing industry (commercial and recreational). In addition to standard Federal government grant application requirements, S-K applicants must provide a project narrative and a budget narrative. Successful grant applicants are required to submit semi-annual progress reports plus a final report.

##### II. Method of Collection

All documents are submitted in electronic format through NOAA's grant Web site [https://\\*grants\\*on\\*line\\*.rdc.noaa.gov/](https://*grants*on*line*.rdc.noaa.gov/).

##### III. Data

*OMB Number:* 0648-0135.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Not-for-profit institutions; business or other for-profit organizations; individuals or households; and state, local or tribal government.

*Estimated Number of Respondents:* 98.

*Estimated Time per Response:* 1 hour for a project narrative; 1 hour for a budget narrative; 2 hours and 30 minutes for a semi-annual progress report; and 13 hours for a final report.

*Estimated Total Annual Burden Hours:* 980.

*Estimated Total Annual Cost to Public:* \$0.

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 3, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7-19857 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Alaska License Limitation Program for Groundfish, Crab, and Scallops

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before December 10, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instruments and instructions should be directed to Patsy A. Bearden, 907-586-7008 or [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The License Limitation Program (LLP) restricts access to the commercial groundfish fisheries in the Exclusive Economic Zone off Alaska except for certain areas where alternative programs exist. The LLP also restricts access to the commercial crab fisheries for the Bering Sea and Aleutian Islands (BSAI) and access to the commercial scallop fisheries off Alaska.

Applications for permits were a one-time process. An LLP application

originally was used to determine owners of vessels who were qualified to obtain an LLP license, and no new LLP permits may be issued except under very specific conditions. Permits have no expiration date, but are transferable. This collection now supports LLP transfer activities for crab, scallops, and groundfish, and any appeals resulting from denied actions.

## II. Method of Collection

Transfer requests may be submitted by FAX or as paper submissions. Appeals may be submitted by mail as paper submissions.

## III. Data

OMB Number: 0648-0334.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit; Individuals or households.

Estimated Number of Respondents: 144.

Estimated Time per Response: 1 hour to complete and submit a groundfish and crab LLP transfer application; 1 hour to complete and submit a scallop LLP transfer application; 4 hours to complete and submit a transfer appeal.

Estimated Total Annual Burden Hours: 544.

Estimated Total Annual Cost to Public: \$1,012.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 3, 2007.

### Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-19863 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD09

### Marine Mammals; File Nos. 10045, 532-1822

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

**ACTION:** Notice; receipt of application and amendment request.

**SUMMARY:** Notice is hereby given that Samuel Wasser, University of Washington, Box 351800, Seattle, WA 98195, has applied for a scientific research permit (File No. 10045) and Kenneth Balcomb, Center for Whale Studies, P.O. Box 1577, Friday Harbor, WA 98250, has requested an amendment to scientific research Permit No. 532-1822-02.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before November 9, 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

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426.

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](mailto:NMFS.Pr1Comments@noaa.gov). Include in the subject line of the e-mail comment the file number of the application you are commenting on: File No. 10045 or 532-1822.

### FOR FURTHER INFORMATION CONTACT:

Jaclyn Daly or Jennifer Skidmore, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit and amendment requests are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

Permit No. 10045 would authorize fecal collections from killer whales year round in Puget Sound and the Georgia Basin, WA. The purpose of the research is to investigate the impacts of prey availability, toxins, and vessel traffic on killer whales using hormone fecal analysis. The applicant is requesting to harass 30 southern resident killer whales and a total of 10 transient, offshore, and northern resident killer whales annually. The permit would expire 5 years from date of issuance and would require annual re-authorization.

An amendment to Permit No. 532-1822-02, issued on July 17, 2006, is requested by Mr. Balcomb. The permit currently authorizes the permit holder to conduct aerial and vessel surveys, behavioral observations, photo-ID, and fecal and prey collection on southern resident killer whales (*Orcinus orcas*). The permit holder is requesting an additional 12 takes, annually, for satellite dart tagging of southern residents in California, Oregon, and Washington. The permit would expire April 14, 2011 and requires annual re-authorization.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 3, 2007.

### P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7-19925 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 081403A]

**Marine Mammals; File No. 782-1708**

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

**ACTION:** Notice; issuance of permit amendment.

**SUMMARY:** Notice is hereby given that NMFS National Marine Mammal Laboratory, 7600 Sand Point Way NE, Bldg. 4, Seattle, WA 98115-0070 [Principal Investigator: Dr. Thomas Gelatt] has been issued an amendment to scientific research Permit No. 782-1708.

**ADDRESSES:** The amendment 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;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Amy Sloan, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** On August 31, 2007, notice was published in the *Federal Register* (72 FR 50330) that an amendment to Permit No. 782-1708 had been requested by the above-named applicant. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit now authorizes researchers to perform additional sampling procedures on northern fur seals (*Callorhinus ursinus*) already authorized for capture. The amendment does not result in an increase in the number of northern fur seals captured and sampled, but adds the following procedures related to a vital rate study or identification of location of prey consumption events: flipper tagging all animals captured; extraction of a single

tooth, under anesthesia, from all non-pups captured; and use of a stomach temperature telemeter/recorder on non-pups captured.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), it has been determined that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit amendment would not have a significant adverse impact on the human environment.

Dated: October 3, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7-19926 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648-XD16

**Marine Mammals; File No. 782-1702**

**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 National Marine Mammal Laboratory, 7600 Sand Point Way, NE, Seattle, WA 98115-0070, has requested an amendment to Scientific Research Permit No. 782-1702.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before November 9, 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;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426; 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. 782-1702.

**FOR FURTHER INFORMATION CONTACT:**

Tammy Adams or Kate Swails, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 782-1702 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. 782-1702, issued on September 16, 2003 (68 FR 58663) authorizes the permit holder to conduct aerial, ground, and vessel surveys annually in California, Washington, and Oregon for stock assessment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern elephant seals (*Mirounga angustirostris*). Harbor seals, California sea lions, and northern elephant seals may be captured, tagged, and hot-branded for long-term identification of individuals and information on reproductive success, survival and longevity. Blood samples may be collected for disease screening. Blubber biopsies may be taken for contaminant analysis. Other tissues may be sampled for genetics and for fatty acid analysis. Some animals may be instrumented with VHF radio transmitters, Time-Depth Recorders, satellite tags, or sonic tags to document movements, activity and foraging patterns.

The permit holder now requests authorization to conduct additional activities on up to 20 adult harbor seals annually. These seals, excluding pregnant or lactating females, would receive gas anesthesia following capture, have stomach temperature transmitters inserted via stomach intubation, and have an external data

logger attached externally. The purpose of the additional protocols is to augment current studies on harbor seal diet and abundance. This amendment would not result in capture or disturbance of marine mammals beyond those numbers already authorized by the subject permit.

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: October 3, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7-19930 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XD19**

#### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a public meeting of the Habitat Protection Advisory Panel (AP).

**DATES:** The meeting will convene at 8:30 a.m. on Thursday, October 25, 2007 and conclude no later than 4 p.m.

**ADDRESSES:** This meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, New Orleans, LA; telephone: (504) 469-5000.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875-5912.

**SUPPLEMENTARY INFORMATION:** At this meeting, the AP will tentatively discuss the Louisiana Coastal Protection and

Restoration Plan, a summary of the Louisiana Coastal Protection and Restoration Plan Habitat Evaluation Team, widening of the Gulfport Harbor Ship Channel, the Bienville Offshore Energy Terminal Liquid Natural Gas (LNG) Facility, Hurricane Katrina debris removal in Louisiana coastal waters, and potential habitat impacts from hurricane levee construction.

The Louisiana/Mississippi group is part of a three unit Habitat Protection AP of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348-1630.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 3, 2007.

**Tracey L. Thompson,**

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

[FR Doc. E7-19822 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XD20**

#### 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) will hold a one-day Council meeting on October 25, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Thursday, October 25 beginning at 9 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

*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:

##### Thursday, October 25, 2007

Following introductions, the Council will review and approve final measures for Framework Adjustment 19 to Atlantic Sea Scallop Fishery Management Plan. The biennial adjustment will set management measures for fishing years 2008 and 2009. Among others, management measures will include days-at-sea allocations, access area allocations, specific measures for the general category fishery, minor modifications to the observer set-aside program, consideration of new scallop rotational areas, a revision to the overfishing definition, a 30-day Vessel Monitoring System power-down provision, a prohibition on deck-loading scallops and crew-size restrictions on access area trips. Following a lunch break there will be an opportunity for brief comments from the public on items relevant to Council business but not otherwise listed on the agenda. The meeting will adjourn once all sea scallop agenda items are addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council 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 that the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: October 3, 2007.

**Tracey L. Thompson,**

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

[FR Doc. E7-19823 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO-P-2007-0031]

#### Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is publishing examination guidelines for determining obviousness under 35 U.S.C. 103 in view of the Supreme Court decision in *KSR International Co. v. Teleflex Inc.* These guidelines will assist USPTO personnel to make a proper determination of obviousness under 35 U.S.C. 103 and to provide an appropriate supporting rationale.

**DATES:** These guidelines are effective October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Contact either Kathleen Kahler Fonda, Legal Advisor (telephone (571) 272-7754; e-mail [kathleen.fonda@uspto.gov](mailto:kathleen.fonda@uspto.gov)) or Pinchus M. Laufer, Patent Examination Policy Analyst (telephone (571) 272-7726; e-mail [pinchus.laufer@uspto.gov](mailto:pinchus.laufer@uspto.gov)), of the Office of the Deputy Commissioner for Patent Examination Policy. Alternatively, mail may be addressed to Ms. Fonda or Mr. Laufer at Commissioner for Patents, attn: KSR, P.O. Box 1450, Alexandria, VA 22313-1450.

**SUPPLEMENTARY INFORMATION:** These guidelines are intended to assist Office personnel to make a proper determination of obviousness under 35 U.S.C. 103, and to provide an appropriate supporting rationale in view of the recent decision by the Supreme Court in *KSR International Co. v. Teleflex Inc.* (KSR).<sup>1</sup> The guidelines are

based on the Office's current understanding of the law, and are believed to be fully consistent with the binding precedent of the Supreme Court.<sup>2</sup>

These guidelines do not constitute substantive rule making and hence do not have the force and effect of law. They have been developed as a matter of internal Office management and are not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office. Rejections will continue to be based upon the substantive law, and it is these rejections that are appealable. Consequently, any failure by Office personnel to follow the guidelines is neither appealable nor petitionable.

To the extent that earlier guidance from the Office, including certain sections of the current Manual of Patent Examining Procedure (MPEP), is inconsistent with the guidance set forth herein, Office personnel are to follow these guidelines. The next revision of the MPEP will be updated accordingly.

#### I. The *KSR* Decision and Principles of the Law of Obviousness

Teleflex owned a patent claiming technology useful in the gas pedal of a car. The invention at issue in *KSR* was a pedal assembly that could be adjusted to accommodate drivers of different statures. The electronic pedal-position sensor was positioned on the support for the pedal assembly, and the pivot point of the pedal remained fixed regardless of how the pedal assembly was adjusted. This combination of the fixed pivot point for the adjustable pedal and the fixed sensor position on the support resulted in a simpler, lighter, and more compact design.

Teleflex sued KSR for infringement. The district court cited references that separately taught adjustable pedals and sensors, and found on summary judgment that Teleflex's patent was invalid for obviousness. On appeal, the Federal Circuit vacated the district court's decision, and remanded the case. The Federal Circuit stated that "the district court's analysis applied an incomplete teaching-suggestion-motivation test" in arriving at the finding of obviousness.<sup>3</sup>

Upon KSR's petition for review of the Federal Circuit's decision, the Supreme Court reversed, concluding that the district court had correctly determined that the patent was invalid for

obviousness. The Supreme Court reaffirmed the familiar framework for determining obviousness as set forth in *Graham v. John Deere Co.*, but stated that the Federal Circuit had erred by applying the teaching-suggestion-motivation (TSM) test in an overly rigid and formalistic way.<sup>4</sup> Specifically, the Supreme Court stated that the Federal Circuit had erred in four ways: (1) "By holding that courts and patent examiners should look only to the problem the patentee was trying to solve;"<sup>5</sup> (2) by assuming "that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem;"<sup>6</sup> (3) by concluding "that a patent claim cannot be proved obvious merely by showing that the combination of elements was 'obvious to try,'"<sup>7</sup> and (4) by overemphasizing "the risk of courts and patent examiners falling prey to hindsight bias" and as a result applying "[r]igid preventative rules that deny factfinders recourse to common sense."<sup>8</sup>

In *KSR*, the Supreme Court particularly emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art,"<sup>9</sup> and discussed circumstances in which a patent might be determined to be obvious. Importantly, the Supreme Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results."<sup>10</sup> The Supreme Court stated that there are "[t]hree cases decided after *Graham* [that] illustrate this doctrine."<sup>11</sup> (1) "In *United States v. Adams*, \* \* \* [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result."<sup>12</sup> (2) "In *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, \* \* \* [t]he two [pre-existing elements] in combination did no more than they would in separate, sequential operation."<sup>13</sup> (3) "[I]n *Sakraida v. AG Pro, Inc.*, the Court derived \* \* \* the conclusion that when

<sup>4</sup> *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1391.

<sup>5</sup> *Id.* at \_\_\_, 82 USPQ2d at 1397.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at \_\_\_, 82 USPQ2d at 1395.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>2</sup> Further developments in the law of obviousness are to be expected in view of *KSR*. Thus, it is not clear which Federal Circuit decisions will retain their viability.

<sup>3</sup> *Teleflex Inc. v. KSR Int'l Co.*, 119 Fed. Appx. 282, 288 (Fed. Cir. 2005).

<sup>1</sup> 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

a patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious.”<sup>14</sup> (Internal quotations omitted.) The principles underlying these cases are instructive when the question is whether a patent application claiming the combination of elements of prior art would have been obvious. The Supreme Court further stated that:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, 35 U.S.C. 103 bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.<sup>15</sup>

When considering obviousness of a combination of known elements, the operative question is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.”<sup>16</sup>

## II. The Basic Factual Inquiries of *Graham v. John Deere Co*

An invention that would have been obvious to a person of ordinary skill at the time of the invention is not patentable.<sup>17</sup> As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*<sup>18</sup> Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel.<sup>19</sup> Such evidence, sometimes referred to as “secondary considerations,” may include evidence of commercial success, long-felt but unsolved needs, failure of others, and unexpected results. The evidence may be included in the specification as filed,

accompany the application on filing, or be provided in a timely manner at some other point during the prosecution. The weight to be given any objective evidence is decided on a case-by-case basis. The mere fact that an applicant has presented evidence does not mean that the evidence is dispositive of the issue of obviousness.

The question of obviousness must be resolved on the basis of these factual determinations. While each case is different and must be decided on its own facts, the *Graham* factors, including secondary considerations when present, are the controlling inquiries in any obviousness analysis.<sup>20</sup> As stated by the Supreme Court in *KSR*, “While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”<sup>21</sup>

### *Office Personnel as Factfinders*

Office personnel fulfill the critical role of factfinder when resolving the *Graham* inquiries. It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying *Graham* inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.

Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103. 35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed. Clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt

resolution of issues pertinent to patentability.<sup>22</sup>

In short, the focus when making a determination of obviousness should be on what a person of ordinary skill in the pertinent art would have known at the time of the invention, and on what such a person would have reasonably expected to have been able to do in view of that knowledge. This is so regardless of whether the source of that knowledge and ability was documentary prior art, general knowledge in the art, or common sense. What follows is a discussion of the *Graham* factual inquiries.

### A. Determining the Scope and Content of the Prior Art

In determining the scope and content of the prior art, Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application under examination by reading the specification, including the claims, to understand what the applicant has invented.<sup>23</sup> The scope of the claimed invention must be clearly determined by giving the claims the “broadest reasonable interpretation consistent with the specification.”<sup>24</sup> Once the scope of the claimed invention is determined, Office personnel must then determine what to search for and where to search.

1. *What to search for*: The search should cover the claimed subject matter and should also cover the disclosed features which might reasonably be expected to be claimed.<sup>25</sup> Although a rejection need not be based on a teaching or suggestion to combine, a preferred search will be directed to finding references that provide such a teaching or suggestion if they exist.

2. *Where to search*: Office personnel should continue to follow the general search guidelines set forth in MPEP § 904 to § 904.03 regarding search of the prior art. Office personnel are reminded that, for purposes of 35 U.S.C. 103, prior art can be either in the field of applicant’s endeavor or be reasonably pertinent to the particular problem with which the applicant was concerned. Furthermore, prior art that is in a field of endeavor other than that of the applicant,<sup>26</sup> or solves a problem which

<sup>20</sup> The *Graham* factors were reaffirmed and relied upon by the Supreme Court in its consideration and determination of obviousness in the fact situation presented in *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1391. The Supreme Court has utilized the *Graham* factors in each of its obviousness decisions since *Graham*. See *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 189 USPQ 449, reh’g denied, 426 U.S. 955 (1976); *Dann v. Johnston*, 425 U.S. 219, 189 USPQ 257 (1976); and *Anderson’s-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57, 163 USPQ 673 (1969).

<sup>21</sup> *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1391.

<sup>22</sup> These guidelines focus on the proper content of an obviousness rejection, and should not be construed as dictating any particular format.

<sup>23</sup> See MPEP § 904 (8th edition, revision 5, August 2006).

<sup>24</sup> See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.

<sup>25</sup> See MPEP § 904.02.

<sup>26</sup> As noted by the Court in *KSR*, “[w]hen a work is available in one field of endeavor, design

<sup>14</sup> *Id.* at \_\_\_, 82 USPQ2d at 1395–96.

<sup>15</sup> *Id.* at \_\_\_, 82 USPQ2d at 1396.

<sup>16</sup> *Id.*

<sup>17</sup> 35 U.S.C. 103(a).

<sup>18</sup> 383 U.S. 1, 148 USPQ 459 (1966).

<sup>19</sup> *Id.* at 17–18, 148 USPQ at 467.

is different from that which the applicant was trying to solve, may also be considered for the purposes of 35 U.S.C. 103.<sup>27</sup>

For a discussion of what constitutes prior art, see MPEP § 901 to § 901.06(d) and § 2121 to § 2129.

#### B. Ascertaining the Differences Between the Claimed Invention and the Prior Art

Ascertaining the differences between the claimed invention and the prior art requires interpreting the claim language,<sup>28</sup> and considering both the invention and the prior art as a whole.<sup>29</sup>

#### C. Resolving the Level of Ordinary Skill in the Art

Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill. A finding as to the level of ordinary skill may be used as a partial basis for a resolution of the issue of obviousness.

The person of ordinary skill in the art is a hypothetical person who is presumed to have known the relevant art at the time of the invention. Factors that may be considered in determining the level of ordinary skill in the art may include: (1) "Type of problems encountered in the art;" (2) "prior art solutions to those problems;" (3) "rapidity with which innovations are made;" (4) "sophistication of the technology;" and (5) "educational level of active workers in the field. In a given case, every factor may not be present,

incentives and other market forces can prompt variations of it, either in the same field or a *different one*." (Emphasis added) 550 U.S. at \_\_, 82 USPQ2d at 1396.

<sup>27</sup> The Court in *KSR* stated that "[t]he first error \* \* \* in this case was \* \* \* holding that courts and patent examiners should look only to the problem the patentee was trying to solve. The Court of Appeals failed to recognize that the problem motivating the patentee may be only one of many addressed by the patent's subject matter \* \* \*. The second error [was] \* \* \* that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem." 550 U.S. at \_\_, 82 USPQ2d at 1397. Federal Circuit case law prior to the Supreme Court's decision in *KSR* is generally in accord with these statements by the *KSR* Court. See, e.g., *In re Dillon*, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (en banc) ("[I]t is not necessary in order to establish a *prima facie* case of obviousness that both a structural similarity between a claimed and prior art compound (or a key component of a composition) be shown and that there be a suggestion in or expectation from the prior art that the claimed compound or composition will have the same or a similar utility as one newly discovered by applicant."); *In re Lintner*, 458 F.2d 1013, 1018, 173 USPQ 560, 562 (CCPA 1972) ("The fact that [applicant] uses sugar for a different purpose does not alter the conclusion that its use in a prior art composition would be *prima facie* obvious from the purpose disclosed in the references.").

<sup>28</sup> See MPEP § 2111.

<sup>29</sup> See MPEP § 2141.02.

and one or more factors may predominate."<sup>30</sup>

"A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton."<sup>31</sup> "[I]n many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle."<sup>32</sup> Office personnel may also take into account "the inferences and creative steps that a person of ordinary skill in the art would employ."<sup>33</sup>

In addition to the factors above, Office personnel may rely on their own technical expertise to describe the knowledge and skills of a person of ordinary skill in the art.<sup>34</sup>

### III. Rationales To Support Rejections Under 35 U.S.C. 103

Once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

The obviousness analysis cannot be confined by \* \* \* overemphasis on the importance of published articles and the explicit content of issued patents \* \* \*. In many fields it may be that there is little discussion of obvious techniques or combinations, and it often may be the case that market demand, rather than scientific literature, will drive design trends.<sup>35</sup>

Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. The prior art reference (or references when combined) need not teach or suggest all the claim limitations; however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. The "mere existence of differences between the prior art and an invention does not establish the invention's nonobviousness."<sup>36</sup> The gap between the prior art and the claimed invention may not be "so great as to render the

[claim] nonobvious to one reasonably skilled in the art."<sup>37</sup> In determining obviousness, neither the particular motivation to make the claimed invention nor the problem the inventor is solving controls. The proper analysis is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts.<sup>38</sup> Factors other than the disclosures of the cited prior art may provide a basis for concluding that it would have been obvious to one of ordinary skill in the art to bridge the gap. The rationales discussed below outline reasoning that may be applied to find obviousness in such cases.

If the search of the prior art and the resolution of the *Graham* factual inquiries reveal that an obviousness rejection may be made using the familiar teaching-suggestion-motivation (TSM) rationale, then such a rejection using the TSM rationale can still be made. Although the Supreme Court in *KSR* cautioned against an overly rigid application of TSM, it also recognized that TSM was one of a number of valid rationales that could be used to determine obviousness.<sup>39</sup> Office personnel should also consider whether one or more of the other rationales set forth below support a conclusion of obviousness.<sup>40</sup> Note that the list of rationales provided below is not intended to be an all-inclusive list. Other rationales to support a conclusion of obviousness may be relied upon by Office personnel.

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*<sup>41</sup> stated that "[R]ejections on obviousness cannot be sustained by

<sup>37</sup> *Id.*

<sup>38</sup> 35 U.S.C. 103(a).

<sup>30</sup> *In re GPAC*, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995); *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962, 1 USPQ2d 1196, 1201 (Fed. Cir. 1986); *Envil. Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983).

<sup>31</sup> *KSR*, 550 U.S. at \_\_, 82 USPQ2d at 1397.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at \_\_, 82 USPQ2d at 1396.

<sup>34</sup> The Federal Circuit has stated that examiners and administrative patent judges on the Board are "persons of scientific competence in the fields in which they work" and that their findings are "informed by their scientific knowledge, as to the meaning of prior art references to persons of ordinary skill in the art." *In re Berg*, 320 F.3d 1310, 1315, 65 USPQ2d 2003, 2007 (Fed. Cir. 2003).

<sup>35</sup> *KSR*, 550 U.S. at \_\_, 82 USPQ2d at 1396.

<sup>36</sup> *Dann v. Johnston*, 425 U.S. 219, 230, 189 USPQ 257, 261 (1976).

<sup>39</sup> According to the Supreme Court, establishment of the TSM approach to the question of obviousness "captured a helpful insight." 550 U.S. at \_\_, 82 USPQ2d 1385, 1396 (citing *In re Bergel*, 292 F.2d 955, 956-57, 130 USPQ 206, 207-08 (1961)). Furthermore, the Court explained that "[t]here is no necessary inconsistency between the idea underlying the TSM test and the *Graham* analysis." *KSR*, 550 U.S. at \_\_, 82 USPQ2d at 1396. The Supreme Court also commented that the Federal Circuit "no doubt has applied the test in accord with these principles [set forth in *KSR*] in many cases." *Id.* at \_\_, 82 USPQ2d at 1396.

<sup>40</sup> The Court in *KSR* identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*. *Id.* at \_\_, 82 USPQ2d at 1395-97.

<sup>41</sup> 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”<sup>42</sup>

#### Rationales

(A) Combining prior art elements according to known methods to yield predictable results;

(B) Simple substitution of one known element for another to obtain predictable results;

(C) Use of known technique to improve similar devices (methods, or products) in the same way;

(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

(E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

The subsections below include discussions of each rationale along with examples illustrating how the cited rationales may be used to support a finding of obviousness. The cases cited (from which the facts were derived) may not necessarily stand for the proposition that the particular rationale is the basis for the court’s holding of obviousness. Note that, in some instances, a single case is used in different subsections to illustrate the use of more than one rationale to support a finding of obviousness. It may often be the case that, once the *Graham* inquiries have been satisfactorily resolved, a conclusion of obviousness may be supported by more than one line of reasoning.

#### A. Combining Prior Art Elements According to Known Methods To Yield Predictable Results

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate the following:

(1) a finding that the prior art included each element claimed, although not

necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference;

(2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely would have performed the same function as it did separately;

(3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and

(4) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention.<sup>43</sup> “[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”<sup>44</sup> If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

*Example 1:* The claimed invention in *Anderson’s-Black Rock, Inc. v. Pavement Salvage Co.*<sup>45</sup> was a paving machine which combined several well-known elements onto a single chassis. Standard prior art paving machines typically combined equipment for spreading and shaping asphalt onto a single chassis. The patent claim included the well-known element of a radiant-heat burner attached to the side of the paver for the purpose of preventing cold joints during continuous strip paving.<sup>46</sup> All of the component parts were known in the prior art. The only difference was the combination of the “old elements” into a single device by mounting them on a single chassis. The Court found that the operation of the heater was in no way dependent on the operation of the other equipment, and that a separate heater could also be used in conjunction with a

standard paving machine to achieve the same results. The Court concluded that “[t]he convenience of putting the burner together with the other elements in one machine, though perhaps a matter of great convenience, did not produce a ‘new’ or ‘different function’”<sup>47</sup> and that to those skilled in the art the use of the old elements in combination would have been obvious.

Note that combining known prior art elements is not sufficient to render the claimed invention obvious if the results would not have been predictable to one of ordinary skill in the art.<sup>48</sup> “When the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious.”<sup>49</sup>

*Example 2:* The claimed invention in *Ruiz v. AB Chance Co.*<sup>50</sup> was directed to a system which employs a screw anchor for underpinning existing foundations and a metal bracket to transfer the building load onto the screw anchor. The prior art (Fuller) used screw anchors for underpinning existing structural foundations. Fuller used a concrete haunch to transfer the load of the foundation to the screw anchor. The prior art (Gregory) used a push pier for underpinning existing structural foundations. Gregory taught a method of transferring load using a bracket, specifically, a metal bracket transfers the foundation load to the push pier. The pier is driven into the ground to support the load. Neither reference showed the two elements of the claimed invention—screw anchor and metal bracket—used together. The court found that “artisans knew that a foundation underpinning system requires a means of connecting the foundation to the load-bearing member.”<sup>51</sup>

The nature of the problem to be solved—underpinning unstable foundations—as well as the need to connect the member to the foundation to accomplish this goal, would have led one of ordinary skill in the art to choose an appropriate load bearing member and a compatible attachment. Therefore, it would have been obvious to use a metal bracket (as shown in Gregory) in combination with the screw anchor (as

<sup>47</sup> *Id.* at 60, 163 USPQ at 674.

<sup>48</sup> *United States v. Adams*, 383 U.S. 39, 51–52, 148 USPQ 479, 483 (1966). In *Adams*, the claimed invention was to a battery with one magnesium electrode and one cuprous chloride electrode that could be stored dry and activated by the addition of plain water or salt water. Although magnesium and cuprous chloride were individually known battery components, the Court concluded that the claimed battery was nonobvious. The Court stated that “[d]espite the fact that each of the elements of the Adams battery was well known in the prior art, to combine them as did Adams required that a person reasonably skilled in the prior art must ignore” the teaching away of the prior art that such batteries were impractical and that water-activated batteries were successful only when combined with electrolytes detrimental to the use of magnesium electrodes. *Id.* at 42–43, 50–52, 148 USPQ at 480, 483.

<sup>49</sup> *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1395.

<sup>50</sup> 357 F.3d 1270, 69 USPQ2d 1686 (Fed. Cir. 2004).

<sup>51</sup> *Id.* at 1276, 69 USPQ2d at 1691.

<sup>43</sup> *Id.* at \_\_\_, 82 USPQ2d at 1395; *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); *Anderson’s-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57, 62–63, 163 USPQ 673, 675 (1969); *Great Atl. & Pac. Tea Co. v. Supermarket Equip. Corp.*, 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

<sup>44</sup> *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

<sup>45</sup> 396 U.S. 57, 163 USPQ 673 (1969).

<sup>46</sup> The prior art used radiant heat for softening the asphalt to make patches, but did not use radiant heat burners to achieve continuous strip paving.

<sup>42</sup> *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396.

shown in Fuller) to underpin unstable foundations.

#### B. Simple Substitution of One Known Element for Another To Obtain Predictable Results

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate the following:

(1) a finding that the prior art contained a device (method, product, etc.) which differed from the claimed device by the substitution of some components (step, element, etc.) with other components;

(2) a finding that the substituted components and their functions were known in the art;

(3) a finding that one of ordinary skill in the art could have substituted one known element for another, and the results of the substitution would have been predictable; and

(4) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

*Example 1:* The claimed invention in *In re Fout*<sup>52</sup> was directed to a method for decaffeinating coffee or tea. The prior art (Pagliaro) method produced a decaffeinated vegetable material and trapped the caffeine in a fatty material (such as oil). The caffeine was then removed from the fatty material by an aqueous extraction process. Applicant (Fout) substituted an evaporative distillation step for the aqueous extraction step. The prior art (Waterman) suspended coffee in oil and then directly distilled the caffeine through the oil. The court found that “[b]ecause both Pagliaro and Waterman teach a method for separating caffeine from oil, it would have been *prima facie* obvious to substitute one method for the other. Express suggestion to substitute one equivalent for another need not be present to render such substitution obvious.”<sup>53</sup>

*Example 2:* The invention in *In re O’Farrell*<sup>54</sup> was directed to a method for synthesizing a protein in a transformed bacterial host species by substituting a heterologous gene for a gene native to the host species. Generally speaking, protein synthesis *in vivo* follows the path of DNA to RNA to protein. Although the prior art

Polisky article (authored by two of the three inventors of the application) had explicitly suggested employing the method described for protein synthesis, the inserted heterologous gene exemplified in the article was one that normally did not proceed all the way to the protein production step, but instead terminated with the RNA. A second reference to Bahl had described a general method of inserting chemically synthesized DNA into a plasmid. Thus, it would have been obvious to one of ordinary skill in the art to replace the prior art gene with another gene known to lead to protein production, because one of ordinary skill in the art would have been able to carry out such a substitution, and the results were reasonably predictable.

In response to applicant’s argument that there had been significant unpredictability in the field of molecular biology at the time of the invention, the court stated that the level of skill was quite high and that the teachings of Polisky, even taken alone, contained detailed enabling methodology and included the suggestion that the modification would be successful for synthesis of proteins.

This is not a situation where the rejection is a statement that it would have been “obvious to try” without more. Here there was a reasonable expectation of success. “Obviousness does not require absolute predictability of success.”<sup>55</sup>

*Example 3:* The fact pattern in *Ruiz v. AB Chance Co.*<sup>56</sup> is set forth above in Example 2 in subsection III.A.

The prior art showed differing load-bearing members and differing means of attaching the foundation to the member. Therefore, it would have been obvious to one of ordinary skill in the art to substitute the metal bracket taught in Gregory for Fuller’s concrete haunch for the predictable result of transferring the load.

*Example 4:* The claimed invention in *Ex parte Smith*<sup>57</sup> was a pocket insert for a bound book made by gluing a base sheet and a pocket sheet of paper together to form a continuous two-ply seam defining a closed pocket. The prior art (Wyant) disclosed at least one pocket formed by folding a single sheet and securing the folder portions along the inside margins using any convenient bonding method. The prior art (Wyant) did not disclose bonding the sheets to form a continuous two-ply seam. The prior art (Dick) disclosed a pocket that is made by stitching or otherwise securing two sheets along three of its four edges to define a closed pocket with an opening along its fourth edge.

In considering the teachings of Wyant and Dick, the Board “found that (1) each of the claimed elements is found within

the scope and content of the prior art; (2) one of ordinary skill in the art could have combined the elements as claimed by methods known at the time the invention was made; and (3) one of ordinary skill in the art would have recognized at the time the invention was made that the capabilities or functions of the combination were predictable.” Citing *KSR*, the Board concluded that “[t]he substitution of the continuous, two-ply seam of Dick for the folded seam of Wyant thus is no more than ‘the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.’”

#### C. Use of Known Technique To Improve Similar Devices (Methods, or Products) in the Same Way

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate the following:

(1) a finding that the prior art contained a “base” device (method, or product) upon which the claimed invention can be seen as an “improvement;”

(2) a finding that the prior art contained a “comparable” device (method, or product that is not the same as the base device) that was improved in the same way as the claimed invention;

(3) a finding that one of ordinary skill in the art could have applied the known “improvement” technique in the same way to the “base” device (method, or product) and the results would have been predictable to one of ordinary skill in the art; and

(4) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that a method of enhancing a particular class of devices (methods, or products) was made part of the ordinary capabilities of one skilled in the art based upon the teaching of such improvement in other situations. One of ordinary skill in the art would have been capable of applying this known method of enhancement to a “base” device (method, or product) in the prior art and the results would have been predictable to one of ordinary skill in the art. The Supreme Court in *KSR* noted that if the actual application of the technique would have been beyond the skill of one of ordinary skill in the art, then using the technique would not have been obvious.<sup>58</sup> If any of these findings cannot be made, then this

<sup>52</sup> 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

<sup>53</sup> *Id.* at 301, 213 USPQ at 536.

<sup>54</sup> 853 F.2d 894, 7 USPQ2d 1673 (Fed. Cir. 1988).

<sup>55</sup> *Id.* at 903, 7 USPQ2d at 1681.

<sup>56</sup> 357 F.3d 1270, 69 USPQ2d 1686 (Fed. Cir. 2004).

<sup>57</sup> 83 USPQ2d 1509 (Bd. Pat. App. & Int. 2007).

<sup>58</sup> *KSR*, 550 U.S. at \_\_, 82 USPQ2d at 1396.

rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

*Example 1:* The claimed invention in *In re Nilssen*<sup>59</sup> was directed to a “means by which the self-oscillating inverter in a power-line-operated inverter-type fluorescent lamp ballast is disabled in case the output current from the inverter exceeds some pre-established threshold level for more than a very brief period.”<sup>60</sup> That is, the current output was monitored, and if the current output exceeded some threshold for a specified short time, an actuation signal was sent and the inverter was disabled to protect it from damage.

The prior art (a USSR certificate) described a device for protecting an inverter circuit in an undisclosed manner via a control means. The device indicated the high-load condition by way of the control means, but did not indicate the specific manner of overload protection. The prior art (Kammiller) disclosed disabling the inverter in the event of a high-load current condition in order to protect the inverter circuit. That is, the overload protection was achieved by disabling the inverter by means of a cutoff switch.

The court found “it would have been obvious to one of ordinary skill in the art to use the threshold signal produced in the USSR device to actuate a cutoff switch to render the inverter inoperative as taught by Kammiller.”<sup>61</sup> That is, using the known technique of a cutoff switch for protecting a circuit to provide the protection desired in the inverter circuit of the USSR document would have been obvious to one of ordinary skill.

*Example 2:* The fact pattern in *Ruiz v. AB Chance Co.*<sup>62</sup> is set forth above in Example 2 in subsection III.A.

The nature of the problem to be solved may lead inventors to look at references relating to possible solutions to that problem.<sup>63</sup> Therefore, it would have been obvious to use a metal bracket (as shown in Gregory) with the screw anchor (as shown in Fuller) to underpin unstable foundations.

#### D. Applying a Known Technique to a Known Device (Method, or Product) Ready for Improvement To Yield Predictable Results

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office

personnel must then articulate the following:

(1) a finding that the prior art contained a “base” device (method, or product) upon which the claimed invention can be seen as an “improvement;”

(2) a finding that the prior art contained a known technique that is applicable to the base device (method, or product);

(3) a finding that one of ordinary skill in the art would have recognized that applying the known technique would have yielded predictable results and resulted in an improved system; and

(4) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that a particular known technique was recognized as part of the ordinary capabilities of one skilled in the art. One of ordinary skill in the art would have been capable of applying this known technique to a known device (method, or product) that was ready for improvement and the results would have been predictable to one of ordinary skill in the art. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

*Example 1:* The claimed invention in *Dann v. Johnston*<sup>64</sup> was directed towards a system (i.e., computer) for automatic record keeping of bank checks and deposits. In this system, a customer would put a numerical category code on each check or deposit slip. The check processing system would record these on the check in magnetic ink, just as it did for amount and account information. With this system in place, the bank can provide statements to customers that are broken down to give subtotals for each category. The claimed system also allowed the bank to print reports according to a style requested by the customer. As characterized by the Court, “[u]nder respondent’s invention, then, a general purpose computer is programmed to provide bank customers with an individualized and categorized breakdown of their transactions during the period in question.”<sup>65</sup>

**Base System**—The nature of the current use of data processing equipment and computer software in the banking industry was that banks routinely did much of the record keeping automatically. In routine check processing, the system read any magnetic ink characters identifying the account and routing. The system also read the amount of the check and then printed that value in a designated area of the check. The check was then sent

through a further data processing step which used the magnetic ink information to generate the appropriate records for transactions and for posting to the appropriate accounts. These systems included generating periodic statements for each account, such as the monthly statement sent to checking account customers.

**Improved System**—The claimed invention supplemented this system by recording a category code which can then be utilized to track expenditures by category. Again, the category code will be a number recorded on the check (or deposit slip) which will be read, converted into a magnetic ink imprint, and then processed in the data system to include the category code. This enabled reporting of data by category as opposed to only allowing reporting by account number.

**Known Technique**—This is an application of a technique from the prior art—the use of account numbers (generally used to track an individual’s total transactions) to solve the problem of how to track categories of expenditures to more finely account for a budget. That is, account numbers (identifying data capable of processing in the automatic data processing system) were used to distinguish between different customers. Furthermore, banks have long segregated debits attributable to service charges within any given separate account and have rendered their customers subtotals for those charges. Previously, one would have needed to set up separate accounts for each category and thus receive separate reports. Supplementing the account information with additional digits (the category codes) solved the problem by effectively creating a single account that can be treated as distinct accounts for tracking and reporting services. That is, the category code merely allowed what might previously have been separate accounts to be handled as a single account, but with a number of sub-accounts indicated in the report.

The basic technique of putting indicia on data which then enabled standard sorting, searching, and reporting would have yielded no more than the predictable outcome which one of ordinary skill would have expected to achieve with this common tool of the trade and was therefore an obvious expedient. The Court held that “[t]he gap between the prior art and respondent’s system is simply not so great as to render the system nonobvious to one reasonably skilled in the art.”<sup>66</sup>

<sup>59</sup> 851 F.2d 1401, 7 USPQ2d 1500 (Fed. Cir. 1988).

<sup>60</sup> *Id.* at 1402, 7 USPQ2d at 1501.

<sup>61</sup> *Id.* at 1403, 7 USPQ2d at 1502.

<sup>62</sup> 357 F.3d 1270, 69 USPQ2d 1686 (Fed. Cir. 2004).

<sup>63</sup> *Id.* at 1277, 69 USPQ2d at 1691.

<sup>64</sup> 425 U.S. 219, 189 USPQ 257 (1976).

<sup>65</sup> *Id.* at 222, 189 USPQ at 259.

<sup>66</sup> *Id.* at 230, 189 USPQ at 261.

*Example 2:* The fact pattern in *In re Nilssen*<sup>67</sup> is set forth above in Example 1 in subsection III.C.

The court found “it would have been obvious to one of ordinary skill in the art to use the threshold signal produced in the USSR device to actuate a cutoff switch to render the inverter inoperative as taught by Kammiller.”<sup>68</sup> The known technique of using a cutoff switch would have predictably resulted in protecting the inverter circuit. Therefore, it would have been within the skill of the ordinary artisan to use a cutoff switch in response to the actuation signal to protect the inverter.

#### E. “Obvious To Try”—Choosing From a Finite Number of Identified, Predictable Solutions, With a Reasonable Expectation of Success

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate the following:

- (1) a finding that at the time of the invention, there had been a recognized problem or need in the art, which may include a design need or market pressure to solve a problem;
- (2) a finding that there had been a finite number of identified, predictable potential solutions to the recognized need or problem;
- (3) a finding that one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success; and
- (4) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that “a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.”<sup>69</sup> If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

*Example 1:* The claimed invention in *Pfizer, Inc. v. Apotex, Inc.*<sup>70</sup> was directed to the amlodipine besylate drug product, which is commercially sold in tablet form in the United States under the trademark Norvasc®.

At the time of the invention, amlodipine was known as was the use of besylate anions. Amlodipine was known to have the same therapeutic properties as were being claimed for the amlodipine besylate but Pfizer discovered that the besylate form had better manufacturing properties (e.g., reduced “stickiness”).

Pfizer argued that the results of forming amlodipine besylate would have been unpredictable, and therefore were nonobvious. The court rejected the notion that unpredictability could be equated with nonobviousness here, because there were only a finite number (53) of pharmaceutically acceptable salts to be tested for improved properties.

The court found that one of ordinary skill in the art having problems with the machinability of amlodipine would have looked to forming a salt of the compound and would have been able to narrow the group of potential salt-formers to a group of 53 anions known to form pharmaceutically acceptable salts, which would be an acceptable number to form “a reasonable expectation of success.”

*Example 2:* The claimed invention in *Alza Corp. v. Mylan Laboratories, Inc.*<sup>71</sup> was drawn to sustained-release formulations of the drug oxybutynin in which the drug is released at a specified rate over a 24-hour period. Oxybutynin was known to be highly water-soluble, and the specification had pointed out that development of sustained-release formulations of such drugs presented particular problems.

A prior art patent to Morella had taught sustained-release compositions of highly water-soluble drugs, as exemplified by a sustained-release formulation of morphine. Morella had also identified oxybutynin as belonging to the class of highly water-soluble drugs. The Baichwal prior art patent had taught a sustained-release formulation of oxybutynin that had a different release rate than the claimed invention. Finally, the Wong prior art patent had taught a generally applicable method for delivery of drugs over a 24-hour period. Although Wong mentioned applicability of the disclosed method to several categories of drugs to which oxybutynin belonged, Wong did not specifically mention its applicability to oxybutynin.

The court found that because the absorption properties of oxybutynin would have been reasonably predictable at the time of the invention, there would have been a reasonable expectation of successful development of a sustained-release formulation of oxybutynin as claimed. The prior art, as evidenced by the specification, had recognized the obstacles to be overcome in

development of sustained-release formulations of highly water-soluble drugs, and had suggested a finite number of ways to overcome these obstacles. The claims were obvious because it would have been obvious to try the known methods for formulating sustained-release compositions, with a reasonable expectation of success. The court was not swayed by arguments of a lack of absolute predictability.

*Example 3:* The claimed invention in *Ex parte Kubin*<sup>72</sup> was an isolated nucleic acid molecule. The claim stated that the nucleic acid encoded a particular polypeptide. The encoded polypeptide was identified in the claim by its partially specified sequence, and by its ability to bind to a specified protein.

A prior art patent to Valiante taught the polypeptide encoded by the claimed nucleic acid, but did not disclose either the sequence of the polypeptide, or the claimed isolated nucleic acid molecule. However, Valiante did disclose that by employing conventional methods, such as those disclosed by a prior art laboratory manual by Sambrook, the sequence of the polypeptide could be determined, and the nucleic acid molecule could be isolated. In view of Valiante’s disclosure of the polypeptide, and of routine prior art methods for sequencing the polypeptide and isolating the nucleic acid molecule, the Board found that a person of ordinary skill in the art would have had a reasonable expectation that a nucleic acid molecule within the claimed scope could have been successfully obtained.

Relying on *In re Deuel*, Appellant argued that it was improper for the Office to use the polypeptide of the Valiante patent together with the methods described in Sambrook to reject a claim drawn to a specific nucleic acid molecule without providing a reference showing or suggesting a structurally similar nucleic acid molecule. Citing *KSR*, the Board stated that “when there is motivation to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.” The Board noted that the problem facing those in the art was to isolate a specific nucleic acid, and there were a limited number of methods available to do so. The Board concluded that the skilled artisan would have had reason to try these methods with the reasonable expectation that at least one would be successful. Thus, isolating the

<sup>67</sup> 851 F.2d 1401, 7 USPQ2d 1500 (Fed. Cir. 1988).

<sup>68</sup> *Id.* at 1403, 7 USPQ2d at 1502.

<sup>69</sup> *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1397.

<sup>70</sup> 480 F.3d 1348, 82 USPQ2d 1321 (Fed. Cir. 2007).

<sup>71</sup> 464 F.3d 1286, 80 USPQ2d 1001 (Fed. Cir. 2006).

<sup>72</sup> 83 USPQ2d 1410 (Bd. Pat. App. & Int. 2007).

specific nucleic acid molecule claimed was “the product not of innovation but of ordinary skill and common sense.”

**F. Known Work in One Field of Endeavor May Prompt Variations of it for Use in Either the Same Field or a Different One Based on Design Incentives or Other Market Forces if The Variations Would Have Been Predictable to One of Ordinary Skill in the Art**

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate the following:

(1) a finding that the scope and content of the prior art, whether in the same field of endeavor as that of the applicant's invention or a different field of endeavor, included a similar or analogous device (method, or product);

(2) a finding that there were design incentives or market forces which would have prompted adaptation of the known device (method, or product);

(3) a finding that the differences between the claimed invention and the prior art were encompassed in known variations or in a principle known in the prior art;

(4) a finding that one of ordinary skill in the art, in view of the identified design incentives or other market forces, could have implemented the claimed variation of the prior art, and the claimed variation would have been predictable to one of ordinary skill in the art; and

(5) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claimed invention would have been obvious is that design incentives or other market forces could have prompted one of ordinary skill in the art to vary the prior art in a predictable manner to result in the claimed invention. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

*Example 1:* The fact pattern in *Dann v. Johnston*<sup>73</sup> is set forth above in Example 1 in subsection III.D.

The court found that the problem addressed by applicant—the need to give more detailed breakdown by a category of transactions—was closely analogous to the task of keeping track of the transaction files of individual business units.<sup>74</sup> Thus, an artisan in the data processing area would have recognized the similar class of problem

and the known solutions of the prior art and it would have been well within the ordinary skill level to implement the system in the different environment. The court held that “[t]he gap between the prior art and respondent's system is simply not so great as to render the system nonobvious to one reasonably skilled in the art.”<sup>75</sup>

*Example 2:* The claimed invention in *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc.*<sup>76</sup> was directed to a learning device to help young children read phonetically.

The claim read as follows:  
An interactive learning device, comprising:

a housing including a plurality of switches; a sound production device in communication with the switches and including a processor and a memory; at least one depiction of a sequence of letters, each letter being associable with a switch; and

a reader configured to communicate the identity of the depiction to the processor, wherein selection of a depicted letter activates an associated switch to communicate with the processor, causing the sound production device to generate a signal corresponding to a sound associated with the selected letter, the sound being determined by a position of the letter in the sequence of letter.

The court concluded that the claimed invention would have been obvious in view of the combination of two pieces of prior art, (1) Bevan (which showed an electro-mechanical toy for phonetic learning), (2) the Super Speak & Read device (SSR) (an electronic reading toy), and the knowledge of one of ordinary skill in the art.

The court made clear that there was no technological advance beyond the skill shown in the SSR device. The court stated that “one of ordinary skill in the art of children's learning toys would have found it obvious to combine the Bevan device with the SSR to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost. While the SSR only permits generation of a sound corresponding to the first letter of a word, it does so using electronic means. The combination is thus the adaptation of an old idea or invention (Bevan) using newer technology that is commonly available and understood in the art (the SSR).”

The court found that the claimed invention was but a variation on already known children's toys. This variation

presented no nonobvious advance over other toys. The court made clear that there was no technological advance beyond the skill shown in the SSR device. The court found that “[a]ccommodating a prior art mechanical device that accomplishes that goal to modern electronics would have been reasonably obvious to one of ordinary skill in designing children's learning devices. Applying modern electronics to older mechanical devices has been commonplace in recent years.”

*Example 3:* The claimed invention in *KSR International Co. v. Teleflex Inc.*<sup>77</sup> was an adjustable pedal assembly with a fixed pivot point and an electronic pedal-position sensor attached to the assembly support. The fixed pivot point meant that the pivot was not changed as the pedal was adjusted. The placement of the sensor on the assembly support kept the sensor fixed while the pedal was adjusted.

Conventional gas pedals operated by a mechanical link which adjusted the throttle based on the travel of the pedal from a set position. The throttle controlled the combustion process and the available power generated by the engine. Newer cars used computer controlled throttles in which a sensor detected the motion of the pedal and sent signals to the engine to adjust the throttle accordingly. At the time of the invention, the marketplace provided a strong incentive to convert mechanical pedals to electronic pedals, and the prior art taught a number of methods for doing so. The prior art (Asano) taught an adjustable pedal with a fixed pivot point with mechanical throttle control. The prior art ('936 patent by Byler) taught an electronic pedal sensor which was placed on a pivot point in the pedal assembly and that it was preferable to detect the pedal's position in the pedal mechanism rather than in the engine. The prior art (Smith) taught that to prevent the wires connecting the sensor to the computer from chafing and wearing out, the sensor should be put on a fixed part of the pedal assembly rather than in or on the pedal's footpad. The prior art (Rixon) taught an adjustable pedal assembly (sensor in the footpad) with an electronic sensor for throttle control. There was no prior art electronic throttle control that was combined with a pedal assembly which kept the pivot point fixed when adjusting the pedal.

The Court stated that “[t]he proper question to have asked was whether a pedal designer of ordinary skill, facing the wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading

<sup>73</sup> 425 U.S. 219, 189 USPQ 257 (1976).

<sup>74</sup> *Id.* at 229, 189 USPQ at 261.

<sup>75</sup> *Id.* at 230, 189 USPQ at 261.

<sup>76</sup> 485 F.3d 1157, 82 USPQ2d 1687 (Fed. Cir. 2007).

<sup>77</sup> 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

Asano with a sensor.”<sup>78</sup> The Court found that technological developments in the automotive design would have prompted a designer to upgrade Asano with an electronic sensor. The next question was where to attach the sensor. Based on the prior art, a designer would have known to place the sensor on a nonmoving part of the pedal structure and the most obvious nonmoving point on the structure from which a sensor can easily detect the pedal’s position was a pivot point. The Court concluded that it would have been obvious to upgrade Asano’s fixed pivot point adjustable pedal by replacing the mechanical assembly for throttle control with an electronic throttle control and to mount the electronic sensor on the pedal support structure.

*Example 4:* The claimed invention in *Ex parte Catan*<sup>79</sup> was a consumer electronics device using bioauthentication to authorize sub-users of an authorized credit account to place orders over a communication network up to a pre-set maximum sub-credit limit.

The prior art (Nakano) disclosed a consumer electronics device like the claimed invention, except that security was provided by a password authentication device rather than a bioauthentication device. The prior art (Harada) disclosed that the use of a bioauthentication device (fingerprint sensor) on a consumer electronics device (remote control) to provide bioauthentication information (fingerprint) was known in the prior art at the time of the invention. The prior art (Dethloff) also disclosed that it was known in the art at the time of the invention to substitute bioauthentication for PIN authentication to enable a user to access credit via a consumer electronics device.

The Board found that the prior art “shows that one of ordinary skill in the consumer electronic device art at the time of the invention would have been familiar with using bioauthentication information interchangeably with or in lieu of PINs to authenticate users.” The Board concluded that one of ordinary skill in the art of consumer electronic devices would have found it obvious to update the prior art password device with the modern bioauthentication component and thereby gain, predictably, the commonly understood benefits of such adaptation, that is, a secure and reliable authentication procedure.

#### G. Some Teaching, Suggestion, or Motivation in the Prior Art That Would Have Led One of Ordinary Skill To Modify the Prior Art Reference or To Combine Prior Art Reference Teachings To Arrive at the Claimed Invention

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate the following:

(1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

(2) a finding that there was reasonable expectation of success; and

(3) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that “a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and that there would have been a reasonable expectation of success.”<sup>80</sup> If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

The courts have made clear that the teaching, suggestion, or motivation test is flexible and an explicit suggestion to combine the prior art is not necessary. The motivation to combine may be implicit and may be found in the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved.<sup>81</sup> “[A]n implicit motivation to combine exists not only when a suggestion may be gleaned from the prior art as a whole, but when the ‘improvement’ is technology-independent and the combination of references results in a product or process that is more desirable, for example because it is stronger, cheaper, cleaner, faster, lighter, smaller, more durable, or more efficient. Because the desire to enhance commercial opportunities by improving a product or process is universal—and even common-sensical—we have held that there exists in these situations a motivation to combine prior art references even absent any hint of suggestion in the references themselves. In such situations, the proper question is whether the ordinary artisan possesses knowledge and skills rendering him capable of combining the prior art references.”<sup>82</sup>

#### IV. Applicant’s Reply

Once Office personnel have established the *Graham* factual findings and concluded that the claimed invention would have been obvious, the burden then shifts to the applicant to (1)

show that the Office erred in these findings, or (2) provide other evidence to show that the claimed subject matter would have been nonobvious. 37 CFR 1.111(b) requires applicant to distinctly and specifically point out the supposed errors in the Office’s action and reply to every ground of objection and rejection in the Office action. The reply must present arguments pointing out the specific distinction believed to render the claims patentable over any applied references.

If an applicant disagrees with any factual findings by the Office, an effective traverse of a rejection based wholly or partially on such findings must include a reasoned statement explaining why the applicant believes the Office has erred substantively as to the factual findings. A mere statement or argument that the Office has not established a *prima facie* case of obviousness or that the Office’s reliance on common knowledge is unsupported by documentary evidence will not be considered substantively adequate to rebut the rejection or an effective traverse of the rejection under 37 CFR 1.111(b). Office personnel addressing this situation may repeat the rejection made in the prior Office action and make the next Office action final. See MPEP § 706.07(a).

#### V. Consideration of Applicant’s Rebuttal Evidence

Office personnel should consider all rebuttal evidence that is timely presented by the applicants when reevaluating any obviousness determination. Rebuttal evidence may include evidence of “secondary considerations,” such as “commercial success, long felt but unsolved needs, [and] failure of others”<sup>83</sup>, and may also include evidence of unexpected results. As set forth in section III. above, Office personnel must articulate findings of fact that support the rationale relied upon in an obviousness rejection. As a result, applicants are likely to submit evidence to rebut the fact finding made by Office personnel. For example, in the case of a claim to a combination, applicants may submit evidence or argument to demonstrate that:

(1) one of ordinary skill in the art could not have combined the claimed elements by known methods (e.g., due to technological difficulties);

(2) the elements in combination do not merely perform the function that each element performs separately; or

(3) the results of the claimed combination were unexpected.

<sup>80</sup> *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1360, 80 USPQ2d 1641, 1645 (Fed. Cir. 2006).

<sup>81</sup> *Id.* at 1366, 80 USPQ2d at 1649.

<sup>82</sup> *Id.* at 1368, 80 USPQ2d at 1651.

<sup>83</sup> *Graham v. John Deere Co.*, 383 U.S. at 17, 148 USPQ at 467.

<sup>78</sup> *Id.* at \_\_, 82 USPQ2d at 1399.

<sup>79</sup> 83 USPQ2d 1569 (Bd. Pat. App. & Int.

Once the applicant has presented rebuttal evidence, Office personnel should reconsider any initial obviousness determination in view of the entire record.<sup>84</sup> All the rejections of record and proposed rejections and their bases should be reviewed to confirm their continued viability. The Office action should clearly communicate the Office's findings and conclusions, articulating how the conclusions are supported by the findings. The procedures set forth in MPEP § 706.07(a) are to be followed in determining whether an action may be made final.

See MPEP § 2145 concerning consideration of applicant's rebuttal evidence. See also MPEP § 716 to

<sup>84</sup> See, e.g., *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); *In re Eli Lilly & Co.*, 90 F.2d 943, 945, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990).

§ 716.10 regarding affidavits or declarations filed under 37 CFR 1.132 for purposes of traversing grounds of rejection.

Dated: October 3, 2007.

**Jon W. Dudas,**

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

[FR Doc. E7-19973 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-16-P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal Nos. 08-09]

#### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-09 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 3, 2007.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

**BILLING CODE 5001-06-M**



## DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

OCT 10 2007  
In reply refer to:  
I-07/010555-CFM

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-09, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost \$40 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in cursive script that reads "Richard J. Millies".

Richard J. Millies  
Deputy Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House  
Committee on Foreign Affairs  
Committee on Armed Services  
Committee on Appropriations

Senate  
Committee on Foreign Relations  
Committee on Armed Services  
Committee on Appropriations

## Transmittal No. 08-09

**Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Australia
- (ii) **Total Estimated Value:**
- |                          |                     |
|--------------------------|---------------------|
| Major Defense Equipment* | \$26 million        |
| Other                    | <u>\$14 million</u> |
| TOTAL                    | \$40 million        |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 2,400 Modular Artillery Charge Systems (MACS), 250 M982 Block 1a-2 Excalibur Projectile with base bleed units, 28 Portable Excalibur Fire Control Systems (PEFCS), training ammunition, containers, support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives', engineering and technical support services, and other related elements of logistics support.
- (iv) **Military Department:** Army (UCD)
- (v) **Prior Related Cases, if any:** none
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.
- (viii) **Date Report Delivered to Congress:** 10/10/2007

\* as defined in Section 47(6) of the Arms Export Control Act.

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**POLICY JUSTIFICATION****Australia – Modular Artillery Charge System, M982 Block 1a-2 Excalibur Projectiles**

The Government of Australia has requested a possible sale of 2,400 Modular Artillery Charge Systems (MACS), 250 M982 Block 1a-2 Excalibur Projectile with base bleed units, 28 Portable Excalibur Fire Control Systems (PEFCS), training ammunition, containers, support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives', engineering and technical support services, and other related elements of logistics support. The estimated cost is \$40 million.

The proposed sale will enhance Australia's defensive capabilities and increase interoperability with United States (U.S.) and multi-national forces supporting coalition operations. The country will have no difficulty absorbing this new capability into its military.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractors will be Raytheon Missile Systems Corporation, Tucson, Arizona for Excalibur, and General Dynamics Armament and Technical Products, Camden, Arkansas for MACS. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U. S. Government personnel in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 08-09****Notice of Proposed Issuance of Letter of Offer  
Pursuant to Section 36(b)(1)  
of the Arms Export Control Act, as amended****Annex  
Item No. vii****(vii) Sensitivity of Technology:**

1. The XM982 Excalibur Projectile is a family of precision, extended-range modular projectiles incorporating three unique payload capabilities divided into Block configurations. Block 1 consists of high-explosive, fragmenting, or penetrating unitary munitions to enhance traditional fire support operations with increased range, improved accuracy, and reduced collateral damage against personnel, light material, and structure targets. It provides capability to attack all three key target sets, soft and armored vehicles, and reinforced bunkers, out to ranges exceeding current 155mm family of artillery munitions. An internal Global Positioning System (GPS) updates the inertial navigation system, providing precision guidance and improved accuracy. Excalibur is effective in all weather and terrain. The target, platform location, and GPS-specific data are inductively entered into the projectile's mission computer, located in the nose of the projectile.

2. The XM982 and M982 projectile and components are Unclassified; however, the terminal effects, target effects, GPS Anti-Jam vulnerabilities and render safe procedures are classified Secret. The Modular Artillery Charge System is Unclassified. Embedded within the XM982 and M982 projectiles are fuze components with technologies (the know-how, documentation, software) considered critical, the disclosure of which could result in an adversary developing countermeasures to cause premature operation of the fuze, thus lessening the effect of the projectile. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters, and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon systems effectiveness or could be used in the development of a system with similar or advanced capabilities.

**DEPARTMENT OF EDUCATION****Office of Innovation and Improvement;  
Overview Information; Teaching  
American History Grant Program;  
Notice Inviting Applications for New  
Awards for Fiscal Year (FY) 2008**

(Catalog of Federal Domestic Assistance  
(CFDA) Number: 84.215X.)

**DATES:** *Applications Available:* October 10, 2007.

*Deadline for Notice of Intent to Apply:* November 9, 2007.

*Dates of Pre-Application Meetings:* Pre-application meetings for prospective applicants will be held. Further information on the dates, times, and locations of these meetings will be made available through a notice published in the **Federal Register** and through the Teaching American History Web site at <http://www.ed.gov/programs/teachinghistory>.

*Deadline for Transmittal of Applications:* December 10, 2007.

*Deadline for Intergovernmental Review:* February 7, 2008.

**Full Text of Announcement****I. Funding Opportunity Description**

*Purpose of Program:* The Teaching American History Grant Program supports projects that aim to raise student achievement by improving teachers' knowledge, understanding, and appreciation of traditional American history. Grant awards assist local educational agencies (LEAs), in partnership with entities that have extensive content expertise, to develop, implement, document, evaluate, and disseminate innovative, cohesive models of professional development. By helping teachers to develop a deeper understanding and appreciation of traditional American history as a separate subject within the core curriculum, these programs are intended to improve instruction and raise student achievement.

*Priorities:* This competition includes one absolute priority and one competitive preference priority that are explained in the following paragraphs.

*Absolute Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 2351 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (the No Child Left Behind Act of 2001)(20 U.S.C. 6721(b)). For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Partnerships with Other Agencies or Institutions.* Each applicant LEA must propose to work in partnership with one or more of the following:

- An institution of higher education.
- A non-profit history or humanities organization.
- A library or museum.

*Competitive Preference Priority:* This priority is from the notice of final priorities for discretionary grant programs, published in the **Federal Register** on October 11, 2006 (71 FR 60046). For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 15 points to an application, depending on how well the application meets this priority.

This priority is:

*School Districts with Schools in Need of Improvement, Corrective Action, or Restructuring* (up to 15 additional points). Projects that help school districts implement academic and structural interventions in schools that have been identified for improvement, corrective action, or restructuring under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

**Note:** In addressing this priority, each applicant is encouraged to include a plan for how the applicant will assess the specific needs in the content area of traditional American history in schools that have been identified for improvement, corrective action, or restructuring. In addition, each applicant is encouraged to include a plan for how the applicant will recruit U.S. history teachers from schools that have been identified for improvement, corrective action, or restructuring. Further, each applicant is encouraged to include information on how each of these two plans will be implemented.

**Program Authority:** 20 U.S.C. 6721.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final selection criteria and other application requirements for this program published in the **Federal Register** on April 15, 2005 (70 FR 19939). (c) The notice of final priorities for discretionary grant programs published in the **Federal Register** on October 11, 2006 (71 FR 60046).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

**II. Award Information**

*Type of Award:* Discretionary grants.  
*Estimated Available Funds:* The Administration has requested \$50,000,000 for new awards for this program for FY 2008. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications now to allow enough time to complete the grant process if Congress appropriates funds for this program.

The Department assumes that Congress will appropriate sufficient funds to provide funding for the first three years (36 months) of the project period for each grantee. Thus, we anticipate that initial awards under this competition will be made for a three-year period. Contingent upon the availability of funds and each grantee's substantial progress towards accomplishing the goals and objectives of the project as described in its approved application, we may make continuation awards to grantees for the remaining 24 months of the program. Review of each grantee's progress may include consideration of evidence of promising practice and strong evaluation design. Further, contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

*Maximum Award:* The following maximum award amounts are from the notice of final selection criteria and other application requirements for this program, published in the **Federal Register** on April 15, 2005 (70 FR 19939).

(1) Total funding for a three-year project period is a maximum of \$500,000 for LEAs with enrollments of less than 20,000 students; \$1,000,000 for LEAs with enrollments of 20,000–300,000 students; and \$2,000,000 for LEAs with enrollments above 300,000 students. LEAs may form consortia and combine their enrollments in order to receive a grant reflective of their combined enrollment. For districts applying jointly as a consortium, the maximum award is based on the combined enrollment of the individual districts in the consortium. If more than one LEA wishes to form a consortium, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129 of EDGAR.

(2) A maximum of one grant will be awarded per applicant per competition.

*Estimated Number of Awards:* 52–65.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

### III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools that are considered LEAs under State law and regulations, that must work in partnership with one or more of the following entities:

- An institution of higher education.
- A non-profit history or humanities organization.
- A library or museum.

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:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: [http://edpubs@inet.ed.gov](mailto:http://edpubs@inet.ed.gov).

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215X.

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 person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative to the equivalent of no more than 25 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all

text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:* *Applications Available:* October 10, 2007.

*Deadline for Notice of Intent to Apply:* November 9, 2007.

*Deadline for Transmittal of Applications:* December 10, 2007.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact either one of the two individuals 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.

*Deadline for Intergovernmental Review:* February 7, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

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 electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Teaching American History Grant Program, CFDA Number 84.215X, must be submitted electronically using the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for Teaching American History Grant Program at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number’s alpha suffix in your search (e.g., search for 84.215, not 84.215X).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it

was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see [http://www.grants.gov/applicants/get\\_registered.jsp](http://www.grants.gov/applicants/get_registered.jsp)). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-

Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your

application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

- You do not have the capacity to upload large documents to the Grants.gov system; and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W206, Washington, DC 20202-5960. FAX: (202) 401-8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the

application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215X), 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 84.215X), 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.

#### *c. Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.215X), 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 from the notice of final selection criteria and other application requirements published in the **Federal Register** on April 15, 2005 (70 FR 19939) and are as follows:

(1) *Project quality* (45 points). The Secretary considers the quality of the proposed project by considering—

(a) The likelihood that the proposed project will develop, implement, and strengthen programs to teach traditional American history as a separate academic subject (not as a component of social studies) within elementary school and secondary school curricula.

(b) How specific traditional American history content will be covered by the grant (including the significant issues, episodes, and turning points in the history of the United States; how the words and deeds of individual Americans have determined the course of our Nation; and how the principles of freedom and democracy articulated in the founding documents of this Nation have shaped America's struggles and achievements and its social, political, and legal institutions and relations); the format in which the project will deliver the history content; and the quality of the staff and consultants responsible for delivering these content-based professional development activities, emphasizing, where relevant, their postsecondary teaching experience and scholarship in subject areas relevant to the teaching of traditional American history. The applicant may also attach curricula vitae for individuals who will provide the content training to the teachers.

(c) How well the applicant describes a plan that meets the statutory requirement to carry out activities under the grant in partnership with one or more of the following:

(i) An institution of higher education.

(ii) A non-profit history or humanities organization.

(iii) A library or museum.

(d) The applicant's rationale for selecting the partner(s) and its description of specific activities that the partner(s) will contribute to the grant

during each year of the project. The applicant should include a memorandum of understanding or detailed letters of commitment from the partner(s) in an appendix to the application narrative.

**Note:** The Secretary encourages each applicant to address this criterion by providing a detailed description of the actual history subject content of the professional development and teacher education activities to be carried out under this grant. The Secretary also encourages each applicant to include a discussion of the research base for the professional development strategies and how this research can be used to assist the applicant in designing a project that ensures successful achievement of project objectives. Finally, the Secretary encourages each applicant to describe the applicant's efforts to conduct an assessment of teachers' content needs and describe how that needs assessment is part of a comprehensive, long-term strategy to upgrade teacher quality throughout the school district.

(2) *Significance* (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the project, the Secretary considers—

(a) The extent to which the proposed project is likely to build local capacity to improve or expand the LEA's ability to provide American history teachers professional development in traditional American history subject content and content-related teaching strategies.

(b) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) How teachers will use the knowledge acquired from project activities to improve the quality of instruction. This description may include plans for reviewing how teachers' lesson planning and classroom teaching are affected by their participation in project activities.

**Note:** In meeting this criterion, the Secretary encourages the applicant to include a description of its commitment to build local capacity by primarily serving teachers in its LEA or consortium of LEAs. The Secretary also encourages the applicant to include background and statistical information to explain the project's significance. For example, the applicant could include information on: the extent to which teachers in the LEA are not certified in history or social studies; student achievement data in American history; and rates of student participation in courses such as Advanced Placement U.S. History.

(3) *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) How well the evaluation plans are aligned with the project design explained under the *Project Quality* criterion.

(c) Whether the evaluation includes benchmarks to monitor progress toward specific project objectives, and outcome measures to assess the impact on teaching and learning or other important outcomes for project participants.

(d) Whether the applicant identifies the individual and/or organization that has agreed to serve as evaluator for the project and includes a description of the qualifications of that evaluator.

(e) The extent to which the applicant indicates the following:

(i) What types of data will be collected.

(ii) When various types of data will be collected.

(iii) What methods will be used to collect data.

(iv) What data collection instruments will be developed.

(v) How the data will be analyzed.

(vi) When reports of results and outcomes will be available.

(vii) How the applicant will use the information collected through the evaluation to monitor the progress of the funded project and to provide accountability information about both success at the initial site and effective strategies for replication in other settings.

(viii) How the applicant will devote an appropriate level of resources to project evaluation.

**Note:** The Secretary encourages each applicant to include a plan of how the project's evaluation plan will address the Teaching American History Grant Program Government Performance and Results Act performance indicators (see section entitled "Performance Measures"). Further, each applicant is encouraged to describe how the applicant's evaluation plan will be designed to collect both output data (number of teacher participants, number of workshops held, etc.) and outcome data (improvements in teacher classroom practice, increases in student history achievement, etc.). Finally, each applicant is encouraged to select an independent, objective evaluator who has experience in evaluating educational programs and who will play an active role in the design and development of the project. For resources on what to consider in designing and conducting project evaluations, go to <http://www.whatworkshelpdesk.ed.gov/>.

(4) *Quality of the management plan* (15 points). The Secretary considers the

quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

**Note:** The Secretary encourages each applicant to address this criterion by including in the narrative the roles of partners in each phase of the project. In addition, each applicant is encouraged to consider how the applicant might demonstrate (e.g., through narrative discussion, letters of support, or formal memoranda of understanding) the commitment of partners to the project and the partners' understanding of responsibilities they have agreed to assume in service delivery. Finally, each applicant may include in this narrative a schedule of activities with sufficient time for developing an adequate implementation plan.

2. *Applicant's Past Performance and Compliance History:* In accordance with 34 CFR 75.217(d)(3)(ii) and (iii), the Secretary may consider an applicant's past performance and compliance history when evaluating applications and in making funding decisions.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

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:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual

performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* We have established two performance measures for the Teaching American History Grant Program. The measures are: (1) Students in experimental and quasi-experimental studies of educational effectiveness of Teaching American History Grant Program projects will demonstrate higher achievement on course content measures, statewide U.S. history assessments, or both than students in control and comparison groups, and (2) Teachers will demonstrate an increased understanding of American history through the use of nationally validated tests of American history that can be directly linked to their participation in the Teaching American History Grant Program.

## VII. Agency Contacts

**FOR FURTHER INFORMATION CONTACT:** Alex Stein or Emily Fitzpatrick, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W206, Washington, DC 20202. Telephone: (202) 205-9085 or (202) 260-1498 or by e-mail:

[TeachingAmericanHistory@ed.gov](mailto:TeachingAmericanHistory@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 persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

*Electronic Access to This Document:* You can 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: October 4, 2007.

**Morgan S. Brown,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. E7-19945 Filed 10-9-07; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee); Meeting

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity, Department of Education.

#### What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations (3-5 minutes) before the Committee. In all instances, your comments about agencies seeking initial recognition, continued recognition and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

#### When and Where Will the Meeting Take Place?

We will hold the public meeting on Tuesday, December 18, 2007, from 8:30 a.m. until approximately 5:30 p.m. and on Wednesday, December 19, 2007, from 8:30 a.m. until approximately 12 p.m. in the Mt. Vernon Rooms A and B at The Madison, 1177 Fifteenth Street, NW., Washington, DC 20005. You may call the hotel at (202) 862-1600 to inquire about rooms.

#### What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate

format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

#### Who Is the Contact Person for the Meeting?

Please contact Ms. Melissa Lewis, Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, Room 7127, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219-7009, fax: (202) 219-7008, e-mail: [Melissa.Lewis@ed.gov](mailto:Melissa.Lewis@ed.gov).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339.

#### What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

#### What Are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and

institutional eligibility that the Secretary may prescribe.

#### What Items Will Be on the Agenda for Discussion at the Meeting?

Agenda topics will include the review of agencies that have submitted petitions for renewal of recognition and/or an expansion of an agency's scope of recognition, and the review of agencies that have submitted an interim report.

#### What Agencies Will the National Advisory Committee Review at the Meeting?

The following agencies will be reviewed during the December 18-19, 2007 meeting of the National Advisory Committee:

##### *Nationally Recognized Accrediting Agencies*

Petition for Renewal of Recognition That Includes a Contraction of the Scope of Recognition

1. American Optometric Association, Accreditation Council on Optometric Education (Current scope of recognition: The accreditation in the United States of professional optometric degree programs, optometric technician (associate degree) programs, and optometric residency programs and for the preaccreditation categories of Preliminary Approval and Reasonable Assurance for professional optometric degree programs and Candidacy Pending for optometric residency programs in Veterans' Administration facilities.)

(Requested scope of recognition: The accreditation in the United States of professional optometric degree programs, optometric technician (associate degree) programs, and optometric residency programs and for the preaccreditation categories of Preliminary Approval for professional optometric degree programs and Candidacy Pending for optometric residency programs in Department of Veterans' Affairs facilities.)

Petitions for Renewal of Recognition That Includes an Expansion of the Scope of Recognition

1. National Association of Schools of Art and Design, Commission on Accreditation (Current scope of recognition: The accreditation throughout the United States of institutions and units within institutions offering degree-granting and non-degree-granting programs in art and design and art and design-related disciplines.)

(Requested scope of recognition: The accreditation throughout the United States of free-standing institutions and

units offering art/design and art/design-related programs (both degree- and non-degree-granting), including those offered via distance education.)

2. National Association of Schools of Dance, Commission on Accreditation (Current scope of recognition: The accreditation throughout the United States of institutions, and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines.)

(Requested scope of recognition: The accreditation throughout the United States of free-standing institutions and units offering dance and dance-related programs (both degree- and non-degree-granting), including those offered via distance education.)

3. National Association of Schools of Music, Commission on Accreditation, Commission on Community/Junior College Accreditation (Current scope of recognition: The accreditation throughout the United States of institutions and units within institutions offering degree-granting programs in music and music-related disciplines, including community/junior colleges and independent degree-granting and non-degree-granting institutions.)

(Requested scope of recognition: The accreditation throughout the United States of free-standing institutions and units offering music and music-related programs (both degree- and non-degree-granting), including those offered via distance education.)

4. National Association of Schools of Theatre, Commission on Accreditation (Current scope of recognition: The accreditation throughout the United States of institutions, and units within institutions, offering degree-granting and non-degree-granting programs in theatre and theatre-related disciplines.)

(Requested scope of recognition: The accreditation throughout the United States of free-standing institutions and units offering theatre and theatre-related programs (both degree- and non-degree-granting), including those offered via distance education.)

5. New England Association of Schools and Colleges, Commission on Institutions of Higher Education (Current scope of recognition: The accreditation and preaccreditation ("Candidacy status") of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award bachelor's, master's, and/or doctoral degrees and associate degree-granting institutions in those states that include degrees in liberal arts or general studies among their offerings, including the accreditation of programs offered via

distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

(Requested scope of recognition: The accreditation and preaccreditation ("Candidacy status") of institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont that award associate's, bachelor's, master's, and/or doctoral degrees, including the accreditation of programs offered via distance education within these institutions. This recognition extends to the Board of Trustees of the Association jointly with the Commission for decisions involving preaccreditation, initial accreditation, and adverse actions.)

6. North Central Association of Colleges and Schools, The Higher Learning Commission (Current scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including schools of the Navajo Nation and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Institutional Actions Committee jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or reaffirmation, and continued candidacy. This recognition also extends to the Review Committee of the Accreditation Review Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or candidacy and for initial candidacy or initial accreditation when there is a consensus decision by the Review Committee.)

(Requested scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including the tribal institutions and the accreditation of programs offered via distance education within these institutions. This recognition extends to the Institutional Actions Committee jointly with the Board of Trustees of the

Commission for decisions on cases for continued accreditation or reaffirmation, and continued candidacy. This recognition also extends to the Review Committee of the Accreditation Review Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or candidacy and for initial candidacy or initial accreditation when there is a consensus decision by the Review Committee.)

#### Petitions for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training (Current scope of recognition: The accreditation of institutions of higher education throughout the United States that offer continuing education programs and those that offer occupational associate degree programs and those that offer such programs via distance education.)

(Requested scope of recognition: The accreditation throughout the United States of institutions of higher education that offer continuing education coursework and vocational programs that confer certificates or occupational associate degree, including those programs offered via distance education.)

2. American Academy for Liberal Education (Current and requested scope of recognition: The accreditation and preaccreditation ("Candidacy for Accreditation") of institutions of higher education and programs within institutions of higher education throughout the United States that offer liberal arts degree(s) at the baccalaureate level or a documented equivalency.)

3. Midwifery Education Accreditation Council (Current and requested scope of recognition: The accreditation and preaccreditation throughout the United States of direct-entry midwifery educational institutions and programs conferring degrees and certificates, including the accreditation of such programs offered via distance education.)

4. Northwest Commission on Colleges and Universities (Current scope of recognition: The accreditation and preaccreditation ("Candidacy status") of postsecondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington and the accreditation of such programs offered via distance education within these institutions.)

(Requested scope of recognition: The accreditation and preaccreditation ("Candidacy status") of postsecondary degree-granting educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington and the accreditation of such programs offered

via distance education within these institutions.)

5. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (Current scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of community and junior colleges located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, and the accreditation of such programs offered via distance education at these colleges.)

(Requested scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of two-year, Associate degree granting institutions located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, and the accreditation of such programs offered via distance education at these colleges.)

*Interim Reports* (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition.)

1. Accrediting Council for Independent Colleges and Schools.
2. Accreditation Council for Pharmacy Education.
3. American College of Nurse-Midwives, Division of Accreditation.
4. The Council on Chiropractic Education, Commission on Accreditation.
5. National Accrediting Commission of Cosmetology Arts and Sciences.
6. Southern Association of Colleges and Schools, Commission on Colleges.

Expansion of Scope

1. The Association for Biblical Higher Education, Commission on Accreditation (Current scope of recognition: The accreditation and preaccreditation ("Candidate for Accreditation") of Bible colleges and institutes in the United States offering undergraduate programs.)

(Requested scope of recognition: The accreditation and preaccreditation of institutions of biblical higher education in the United States offering undergraduate programs through both campus-based instruction and distance education.)

2. Joint Review Committee on Education in Radiologic Technology (Current scope of recognition: The

accreditation of educational programs in radiography, including magnetic resonance, radiation therapy, and medical dosimetry, at the certificate, associate, and baccalaureate levels.)

(Requested scope of recognition: The accreditation of educational programs in radiography, magnetic resonance, radiation therapy, and medical dosimetry, including those offered through distance education, at the certificate, associate, and baccalaureate levels.)

*State Agency Recognized for the Approval of Public Postsecondary Vocational Education*

Petition for Renewal of Recognition

1. Puerto Rico State Agency for the Approval of Public Postsecondary Vocational, Technical Institutions and Programs

The agency listed below, which was originally scheduled for review during the National Advisory Committee's December 2007 meeting, will be postponed to a future meeting.

Proposed Master's Degree-Granting Authority

1. United States Naval Test Pilot School, Patuxent River, Maryland (request to award a Master's of Science in Flight Test Engineering Degree.)

**Who Can Make Third-Party Oral Presentations at This Meeting?**

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

**How Do I Request to Make an Oral Presentation?**

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person identified earlier in this notice *so that the request is received via mail, fax, or e-mail no later than November 19, 2007*. Your request (*no more than 6 pages maximum*) must include:

1. The names, addresses, phone and fax numbers, and e-mail addresses of all persons seeking an appearance,
2. The organization they represent, and
3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that *any attachments are included in the 6-page limit*. Please do not send materials directly to Committee members. Only materials

submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the November 19, 2007 deadline will not be distributed to the National Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

**If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?**

This notice requests third-party oral testimony, not written comment. Requests for written comments on agencies that are being reviewed during this meeting were published in the **Federal Register** on August 1 and September 11, 2007. The National Advisory Committee will receive and consider only written comments submitted by the deadline specified in the above-referenced **Federal Register** notice.

**How Do I Request To Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?**

At the conclusion of the meeting, the National Advisory Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. Lewis before or during the meeting.

**How May I Obtain Access to the Records of the Meeting?**

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

**How May I Obtain Electronic Access to This Document?**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/legislation/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/index.html>.

**Authority:** 5 U.S.C. Appendix 2.

Dated: October 2, 2007.

**Diane Auer Jones,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. E7-19874 Filed 10-9-07; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings # 1

October 3, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG07-88-000.

*Applicants:* Snyder Wind Farm, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status for Snyder Wind Farm, LLC.

*Filed Date:* 09/27/2007.

*Accession Number:* 20070927-5021.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 18, 2007.

*Docket Numbers:* EG07-89-000.

*Applicants:* FPL Energy Point Beach, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of FPL Energy Point Beach, LLC.

*Filed Date:* 09/28/2007.

*Accession Number:* 20070928-5006.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER94-1188-043; ER98-1279-014; ER98-4540-012; ER99-1623-012.

*Applicants:* LG&E Energy Marketing-Hadson Energy; LG&E Energy Marketing, Inc.; Western Kentucky Energy Corp; Western Kentucky Energy Corporation; Louisville Gas & Electric Company;

*Description:* LG&E Energy Marketing, Inc., et al. submits revised sheets to Tariff Volume 2 and 3 as Exhibits 1 and 2.

*Filed Date:* 09/24/2007.

*Accession Number:* 20070928-0028.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* ER05-1089-004; ER06-1027-001; EL05-136-002.

*Applicants:* Wisconsin Public Service Corp.

*Description:* Wisconsin Public Service Corporation submits two Stipulations clarifying the settlements of the two agreements differed item provisions pursuant to the Commission's 8/21/07 order.

*Filed Date:* 09/20/2007.

*Accession Number:* 20070928-0118.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 11, 2007.

*Docket Numbers:* ER06-613-004.

*Applicants:* ISO New England, Inc.; New England Power Pool.

*Description:* ISO New England Inc submits report on the status of the implementation of certain reserve market changes that were included as part of Phase II of the Ancillary Services Market project.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0090.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER06-615-013.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits proposed revisions to its MRTU Tariff.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0020.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER06-1131-002.

*Applicants:* LSP-Kendall Energy, LLC.

*Description:* Electric Refund Compliance report of LSP-Kendall Energy, LLC.

*Filed Date:* 09/27/2007.

*Accession Number:* 20070927-5052.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 18, 2007.

*Docket Numbers:* ER06-1346-002.

*Applicants:* White Creek Wind I, LLC.

*Description:* White Creek Wind I, LLC notifies FERC that sales of test energy from the facility commenced on 8/1/07 & submits First Revised Sheet 1, et al. to FERC Electric Tariff, Original Volume 1.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0089.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER07-1247-001.

*Applicants:* FC Energy Services Company, LLC.

*Description:* FC Energy Services Co., LLC submits an amendment to its

proposed market based rate tariff, FERC Electric Tariff 1.

*Filed Date:* 09/27/2007.

*Accession Number:* 20071001-0086.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 18, 2007.

*Docket Numbers:* ER07-1250-001.

*Applicants:* PowerGrid Systems, Inc.

*Description:* PowerGrid Systems, Inc. submits a letter of clarification in response to FERC's request for revisions and original Sheet 2 to FERC Electric Tariff, Original Volume 1 to reflect the requirements of Order 697.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0022.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1291-001.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits revisions to its Open Access Transmission Tariff & requests that the Open Access Transmission Tariff sheets be accepted for filing, effective 10/2/07.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003-0028.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER07-1374-001.

*Applicants:* South Carolina Electric & Gas Company.

*Description:* South Carolina Electric & Gas Co submits an executed Industrial Tap Agreement with the City of Orangeburg, South Carolina.

*Filed Date:* 09/27/2007.

*Accession Number:* 20070928-0081.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 18, 2007.

*Docket Numbers:* ER07-1406-000.

*Applicants:* Long Beach Peak, LLC.

*Description:* Long Beach Peak, LLC's petition for acceptance of their FERC Electric Tariff, Original Volume 1.

*Filed Date:* 09/27/2007.

*Accession Number:* 20071001-0087.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 18, 2007.

*Docket Numbers:* ER07-1407-000.

*Applicants:* Avista Corporation.

*Description:* Avista Corp submits its Third Revised Sheet 8 and 9 to their First Revised Rate Schedule 184.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071001-0089.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1408-000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits a Facilities Agreement for RTU replacement at Tanner Substation between PacifiCorp and City of Provo, Utah.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071001-0088.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1410-000.  
*Applicants:* PB Financial Services, Inc.

*Description:* PB Financial Services, Inc submits a notice of cancellation of its First Revised Rate Schedule FERC 1.  
*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0019.  
*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1411-000.  
*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits its proposed revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0140.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1412-000.

*Applicants:* ISO New England, Inc.  
*Description:* ISO New England, Inc. and New England Power Pool submits Second Revised Sheet 9401, *et al.* to FERC Electric Tariff 3, Attachment D, effective 12/1/07.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0143.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1413-000.

*Applicants:* Entergy Services, Inc.  
*Description:* Entergy Arkansas Inc, *et al.* submit a Network Integration Transmission Service Agreement and Network Operating Agreement.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0139.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1414-000.

*Applicants:* PPM Energy, Inc.  
*Description:* PPM Energy Inc submits its Rate Schedule FERC 3, together with supporting testimony and cost-of-service schedules.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0138.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1415-000.

*Applicants:* Xcel Energy Services, Inc.  
*Description:* NSP Companies et al submit their revised tariff sheets with proposed revisions to the Midwest ISO's Open Access Transmission and Energy Market Tariff, FERC Electric Tariff, Third Revised Volume 1.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0137.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1416-000.

*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC submits revisions to the PJM Open Access Transmission Tariff.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0144.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1417-000.

*Applicants:* Midwest Independent System Operator, Inc.

*Description:* Midwest Independent System Operator, Inc., *et al.* submit proposed revisions to the Congestion Management Process of their Joint Operating Agreement.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0145.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1418-000.

*Applicants:* Duke Energy Carolinas, LLC.

*Description:* Duke Energy Carolinas, LLC submits a revised Network Integration Service Agreement with North Carolina Municipal Power Agency Number 1.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071003-0141.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1419-000.

*Applicants:* PacifiCorp.  
*Description:* PacifiCorp submits a Notice of Cancellation of Service Agreement 67 with Black Hills Corp for Firm Point-to-Point Transmission Service.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071001-0159.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1420-000.

*Applicants:* York Haven Power Company.

*Description:* York Haven Holdings, Inc. submits a notice of cancellation of FERC Electric Tariff, Original Volume 1.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071001-0160.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1421-000; ER07-1422-000.

*Applicants:* PJM Interconnection, LLC.; Virginia Electric and Power Company.

*Description:* Virginia Electric & Power Co dba Dominion Virginia Power submits Attachment H-16B to the Open Access Transmission Tariff administered by PJM Interconnection, LLC.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071001-0161.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER07-1423-000.  
*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits an unexecuted Firm Point-to-Point Transmission Service Agreement with Black Hills Power, Inc.

*Filed Date:* 09/28/2007.

*Accession Number:* 20071001-0162.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 19, 2007.

*Docket Numbers:* ER08-1-000.

*Applicants:* Yuma Power Limited Liability Company.

*Description:* Yuma Power Limited Liability Company submits application for market-based rate authorization and request for waivers and blanket authorizations.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0088.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08-2-000.

*Applicants:* Avista Corporation.

*Description:* Avista Corp and NorthWestern Corp submits a non-confirming Long-Term Service Agreements, FERC electric Rate Schedule 484 and FERC Electric Rate Schedule 248 under ER08-2.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003-0033.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08-3-000.

*Applicants:* Southern Company Services, Inc.

*Description:* Alabama Power Co *et al.* submit information to update the Annual Charge Component.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003-0035.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08-4-000.

*Applicants:* The American Electric Power Service Corp.

*Description:* American Electric Power Service Corp submits a revision to the Repair and Maintenance Agreement with Indiana Michigan Power Co.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003-0034.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08-5-000.

*Applicants:* Ohio Valley Electric Corporation.

*Description:* Ohio Valley Electric Corporation *et al.* submits an unexecuted Interconnection Agreement with the U.S. Department of Energy.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003-0031.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08–6–000.  
*Applicants:* Westar Energy, Inc.  
*Description:* Kansas Gas and Electric Co. and Westar Energy, Inc. submit a Notice of Cancellation of an Electric Power Supply Agreement with City of Moran, Kansas.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003–0032.  
*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08–7–000.  
*Applicants:* Westar Energy, Inc.  
*Description:* Kansas Gas and Electric Co. and Westar Energy, Inc. submit a Notice of Cancellation of an Electric Power Supply Agreement with City of Arma, Kansas.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003–0030.  
*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08–8–000.  
*Applicants:* New England Power Pool.  
*Description:* New England Power Pool Participants Committee submits signature pages of the New England Power Pool Agreement, dated as of 9/1/71.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003–0026.  
*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08–9–000.  
*Applicants:* California Independent System Operator Corporation.  
*Description:* California Independent System Operator Corp. submits an Amendment 2 to the amended and restated Metered Subsystem Aggregator Agreement with Northern California Power Agency.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002–0217.  
*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08–10–000.  
*Applicants:* Pepco Holdings, Inc.  
*Description:* Potomac Electric Power Co., *et al.* submit their request for authorization to implement a 50 basis point return on equity adder in recognition of the PI Companies' participation in PJM Interconnection, LLC.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003–0027.  
*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ER08–11–000.  
*Applicants:* The Connecticut Light and Power Company; The United Illuminating Company.

*Description:* The United Illuminating Co. and the Connecticut Light and Power Co. submit the Trumbull Engineering Design, Construction and Transmission Interconnection Agreement.

*Filed Date:* 10/02/2007.

*Accession Number:* 20071003–0036.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 23, 2007.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES07–67–000.

*Applicants:* National Grid USA.

*Description:* Form 523—Request for Permission to Issue Securities of National Grid USA.

*Filed Date:* 10/01/2007.

*Accession Number:* 20070928–5082.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 2007.

*Docket Numbers:* ES08–1–000.

*Applicants:* PPL Electric Utilities Corporation.

*Description:* PPL Electric Utilities Corp. submits an application for approval to issue promissory notes etc. through 12/31/09 as to not exceed \$750 million.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071003–0016.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 22, 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. For assistance with any FERC Online service, please e-mail: [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Acting Deputy Secretary.*

[FR Doc. E7–19891 Filed 10–9–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 9002–011]

#### Northern States Power Company; Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption to Revise Minimum Flow Requirements.

b. Project No: 9002–011.

c. *Date Filed:* February 6, 2007.

d. *Applicant:* Northern States Power Company (d.b.a. Xcel Energy).

e. *Name of Project:* Apple River Hydroelectric Project.

f. *Location:* On the Apple River, in St. Croix County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Robert W. Olson, Hydro Licensing Specialist, Northern States Power Company (d.b.a. Xcel Energy), 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, WI 54702–0008; Telephone (715) 839–1353, Fax (715) 836–1077, and e-mail: [robert.w.olson@xcelenergy.com](mailto:robert.w.olson@xcelenergy.com).

i. *FERC Contact:* Anumzziatta Purchiaroni, Telephone (202) 502–6191, and e-mail:

[anumzziatta.purchiaroni@ferc.gov](mailto:anumzziatta.purchiaroni@ferc.gov).

j. *Deadline for filing comments, motions to intervene, and protest:* November 2, 2007. All documents

(original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The exemptee seeks authorization to amend terms and conditions, under Article 2 of the exemption to modify the current minimum flow requirements, during the spring time period, at the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-19894 Filed 10-9-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12817-000]

#### Free Flow Power Corporation; Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12817-000.

c. *Date filed:* July 23, 2007.

d. *Applicant:* Free Flow Power Corporation.

e. *Name of Project:* Duncan Point Project.

f. *Location:* The project would be located on the Mississippi River in West Baton Rouge, East Baton Rouge, and Iberville Parishes. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12817-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 2,250 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 45 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The Free Flow Power Corporation's project would have an average annual generation of 197.1 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit—* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the

competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. **Competing Development Application**—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. **Notice of Intent**—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. **Proposed Scope of Studies under Permit**—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. **Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. **Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. **Agency Comments**—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-19895 Filed 10-9-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12822-000]

#### Free Flow Power Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12822-000.

c. *Date filed*: July 23, 2007.

d. *Applicant*: Free Flow Power Corporation.

e. *Name of Project*: Manchac Point Project.

f. *Location*: The project would be located on the Mississippi River in West Baton Rouge, East Baton Rouge, and Iberville Parishes. The project uses no dam or impoundment.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact*: Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12822-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project consists of: (1) 2,350 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 27 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The Free Flow Power Corporation's project would have an average annual generation of 205.86 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using

the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission’s mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering

plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission’s Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under “e-filing” link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title “COMMENTS”, “COMPETING APPLICATION”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission’s regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-19896 Filed 10-9-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12828-000]

#### Free Flow Power Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12828-000.

c. *Date filed:* July 23, 2007.

d. *Applicant:* Free Flow Power Corporation.

e. *Name of Project:* Reliance Light Project.

f. *Location:* The project would be located on the Mississippi River in Iberville Parish. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Dan Irvin, Free Flow Power Corporation, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. The Commission strongly encourages electronic filings. Please include the project number (P-12828-000) on any comments or motions filed.

The Commission’s Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 3,050 proposed 20 kilowatt Free Flow

generating units having a total installed capacity of 61 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The Free Flow Power Corporation's project would have an average annual generation of 267.18 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E7-19897 Filed 10-9-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12853-000]

#### FFP Project 12, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12853-000.

c. *Date filed:* July 25, 2007.

d. *Applicant:* FFP Project 12, LLC.

e. *Name of Project:* St. Rose Bend Project.

f. *Location:* The project would be located on the Mississippi River in St. Charles Parish, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Project 12, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12853-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 1,350 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 27 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The FFP Project 12, LLC, project would have an average annual generation of 118.26 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a

competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of

the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E7-19898 Filed 10-9-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12854-000; FFP Project 13, LLC]

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12854-000.

c. *Date filed:* July 25, 2007.

d. *Applicant:* FFP Project 13, LLC.

e. *Name of Project:* Fashion Light Project.

f. *Location:* The project would be located on the Mississippi River in St Charles Parish. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Project 13, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12854-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 2,200 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 44 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The FFP Project 13, LLC, project would have an average annual generation of 192.72 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-19899 Filed 10-9-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12858-000; FFP Project 16, LLC]

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12858-000.

c. *Date filed:* July 25, 2007.

d. *Applicant:* FFP Project 16, LLC.

e. *Name of Project:* Forty Eight Mile Point Project.

f. *Location*: The project would be located on the Mississippi River in St. James and St. John The Baptist Parishes. The project uses no dam or impoundment.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact*: Mr. Dan Irvin, FFP Project 16, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact*: Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12858–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project consists of: (1) 2,950 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 59 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The FFP Project 16, LLC, project would have an average annual generation of 258.42 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY,

call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E7–19900 Filed 10–9–07; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 12861-000; FFP Project 28, LLC]

**Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments**

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12861-000.

c. *Date filed*: July 25, 2007.

d. *Applicant*: FFP Project 28, LLC.

e. *Name of Project*: Scotlandville Bend Project.

f. *Location*: The project would be located on the Mississippi River in West Baton Rouge and East Baton Rouge Parishes, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Dan Irvin, FFP Project 3, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact*: Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12861-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project consists of: (1) 1,000

proposed 20 kilowatt Free Flow generating units having a total installed capacity of 20 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The FFP Project 28, LLC, project would have an average annual generation of 87.6 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications*: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E7-19901 Filed 10-9-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12927-000; FFP Project 30, LLC]

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12927-000.

c. *Date filed:* August 6, 2007.

d. *Applicant:* FFP Project 30, LLC.

e. *Name of Project:* Morgans Bend Project.

f. *Location:* The project would be located on the Mississippi River in West Feliciana and Pointe Coupee Parishes. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Project 30, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232-3536.

i. *FERC Contact:* Robert Bell, (202) 502-6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission

strongly encourages electronic filings. Please include the project number (P-12927-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 4,700 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 94 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The FFP Project 30, LLC, project would have an average annual generation of 411.72 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit—*Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application—*Any qualified development applicant desiring to file a

competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent—*A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit—*A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene—*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents—*Any filings must bear in all capital letters the title "COMMENTS", "COMPETING

APPLICATION”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission’s regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–19902 Filed 10–9–07; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12928–000; FFP Project 37, LLC]

#### Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12928–000.

c. *Date filed:* August 6, 2007.

d. *Applicant:* FFP Project 37, LLC.

e. *Name of Project:* Anconia Point Project.

f. *Location:* The project would be located on the Mississippi River in Washington County, Mississippi and Chicot County, Arkansas. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Project 37, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. The Commission strongly encourages electronic filings. Please include the project number (P–12928–000) on any comments or motions filed.

The Commission’s Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 750 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 15 megawatts, (2) a proposed transmission line; and (3) appurtenant facilities. The FFP Project 37, LLC, project would have an average annual generation of 65.7 gigawatt-hours and be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission’s Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission’s mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the

competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission’s Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "COMPETING APPLICATION", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-19903 Filed 10-9-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER06-615-012; ER07-1257-000]

#### California Independent System Operator Corporation; Notice Establishing Post-Technical Conference Schedule

October 2, 2007.

In accordance with the directive of the September 21, 2006, Order Conditionally Accepting the California Independent System Operator Corporation's (CAISO) Electric Tariff

Filing to Reflect Market Redesign and Technology Upgrade (MRTU),<sup>1</sup> Federal Energy Regulatory Commission staff convened a technical conference on September 26-27, 2007, to help determine which practices or details in the Business Practice Manuals (BPMs) should be included in the MRTU Tariff.

As stated at the technical conference, the CAISO will file a response concerning the issues discussed at the technical conference by November 15, 2007. Following the CAISO's filing, parties may file comments, due on November 30, 2007, and reply comments, due on December 7, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7-19904 Filed 10-9-07; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

October 3, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP00-404-021, RP07-330-003, RP07-616-001.

*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Company submits Fourth Revised Sheet 260A et al to FERC Gas Tariff, Fifth Revised Volume 1.

*Filed Date:* 10/02/2007.

*Accession Number:* 20071003-0013.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP96-312-170.

*Applicants:* Tennessee Gas Pipeline Company.

*Description:* Tennessee Gas Pipeline Company submits a gas transportation agreement pursuant to their Rate Schedule FT-A, a Pre-Arranged Rate Letter dated 8/29/07.

*Filed Date:* 10/02/2007.

*Accession Number:* 20071003-0011.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-15-000.

*Applicants:* Transcontinental Gas Pipe Line Corp.

*Description:* Transcontinental Gas Pipe Line Corp submits Fiftieth Revised Sheet 27 et al to FERC Gas Tariff, Third Revised Volume 1, effective 10/1/07.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0230.

<sup>1</sup> *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1370 (2006).

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-16-000.

*Applicants:* ANR Storage Company.

*Description:* ANR Storage Co submits Fourth Revised Sheet 0 et al to FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/07.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0229.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-17-000.

*Applicants:* Blue Lake Gas Storage Company.

*Description:* Blue Lake Gas Storage Co submits Second Revised Sheet 0 et al to FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/07.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0231.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-18-000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Natural Gas Pipeline Company of America submits a report of the refunds of penalty revenues for the period of 1/1/07 through 6/30/27.

*Filed Date:* 10/02/2007.

*Accession Number:* 20071003-0012.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 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](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis,**

*Acting Deputy Secretary.*

[FR Doc. E7-19866 Filed 10-9-07; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

October 3, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP93-162-019, CP88-391-039.

*Applicants:* Transcontinental Gas Pipe Line Corporation.

*Description:* Transcontinental Gas Pipe Line Corporation submits its cash-out report for the annual period 8/1/06 through 7/31/07 and its report of cash-out refunds for the Annual Period, etc.

*Filed Date:* 09/27/2007.

*Accession Number:* 20071001-0023.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 9, 2007.

*Docket Numbers:* RP99-513-042.

*Applicants:* Questar Pipeline Company.

*Description:* Questar Pipeline Company submits Forty-Second Revised Sheet 7, *et al.* to FERC Gas Tariff, First Revised Volume 1, effective 11/1/07.

*Filed Date:* 09/27/2007.

*Accession Number:* 20070927-0173.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 9, 2007.

*Docket Numbers:* RP00-70-015.

*Applicants:* Algonquin Gas Transmission Company.

*Description:* Algonquin Gas Transmission, LLC submits Original Sheet 85, *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0092.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP07-725-000.

*Applicants:* Maritimes & Northeast Pipeline, LLC.

*Description:* Maritimes & Northeast Pipeline, LLC submits the corrected Appendix D, Scheduling A, Page 1 of 2 to its annual fuel retainage quantity filing submitted on 9/28/07.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0076.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-11-000.

*Applicants:* Hardy Storage Company, LLC.

*Description:* Hardy Storage Company, LLC submits first Annual Retainage Adjustment Mechanism Filing pursuant to FERC Gas Tariff, Original Volume 1.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0066.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-12-000.

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Columbia Gulf Transmission Company submits their Forty-fourth Revised Sheet 18, *et al.* to FERC Gas Tariff, Second Revised Volume 1, proposed to be effective 11/1/07.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0067.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-13-000.

*Applicants:* ANR Pipeline Company. *Description:* ANR Pipeline Company submits its Fourth Revised Sheet 0, *et al.* to its FERC Gas Tariff, Second Revised Volume No 1.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0091.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 2007.

*Docket Numbers:* RP08-14-000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* Texas Eastern Transmission, LP submits a filing for approval to convert an individually certificated storage service that provides to Public Service Electric & Gas Co., etc.

*Filed Date:* 10/01/2007.

*Accession Number:* 20071002-0093.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 15, 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](mailto: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. E7-19867 Filed 10-9-07; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Western Area Power Administration****Pacific Northwest-Pacific Southwest Intertie Project—Rate Order No. WAPA-130**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Order Concerning Transmission Service Rates.

**SUMMARY:** The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA-130 and Rate Schedules INT-FT4 and INT-NFT3, placing firm and nonfirm transmission service rates for the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis, or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay required investment within the allowable periods.

**DATES:** Rate Schedules INT-FT4 and INT-NFT3 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 2007, and will be in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis ending September 30, 2012, or until the rate schedules are superseded.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457, (602) 605-2453, e-mail [carlson@wapa.gov](mailto:carlson@wapa.gov) or Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457, (602) 605-2442, e-mail [jmurray@wapa.gov](mailto:jmurray@wapa.gov).

**SUPPLEMENTARY INFORMATION:** The existing Rate Schedules consist of separate firm transmission service rates for the 230/345-kilovolt (kV) and 500-kV transmission systems, and a nonfirm transmission service rate for the 230/345/500-kV transmission system. Rate Schedules INT-FT2 and INT-NFT2, Rate Order No. WAPA-71, were approved for a 56-month period beginning February 1, 1996, and ending

September 30, 2000.<sup>1</sup> Rate Schedule INT-FT3, Rate Order No. WAPA-76, superseded Rate Schedule INT-FT2 as it related to firm transmission service on the 230/345-kV transmission system and was approved for a 5-year period beginning January 1, 1999, and ending December 31, 2003.<sup>2</sup> Rate Order No. WAPA-91 extended Rate Schedules INT-FT2 and INT-NFT2 beginning October 1, 2000, through December 31, 2003,<sup>3</sup> as they related to firm transmission service on the 500-kV transmission system and nonfirm transmission service on the 230/345/500-kV transmission system. Rate Order No. WAPA-108 extended Rate Schedules INT-FT2, INT-FT3, and INT-NFT2 beginning January 1, 2004, through December 31, 2006.<sup>4</sup> Western initiated a public process to adjust all three transmission service rates via a notice published in the **Federal Register** on July 12, 2006, (71 FR 39310). Rate Order No. WAPA-133 extended the public process for the rate adjustment that was initiated on July 12, 2006, and extended the existing rate schedules again beginning January 1, 2007, through December 31, 2007.<sup>5</sup>

The existing firm transmission service Rate Schedules are being superseded by Rate Schedule INT-FT4. Under Rate Schedule INT-FT2, the rate for firm point-to-point 500-kV transmission service is \$17.23 per kilowattyear (kWyear). Under Rate Schedule INT-FT3, the rate for firm point-to-point 230/345-kV transmission service is \$12 per kWyear. The provisional rate for firm point-to-point 230/345/500-kV transmission service under Rate Schedule INT-FT4 is \$15.24 per kWyear. The provisional rate for firm transmission service in Rate Schedule INT-FT4 results in a decrease of about

11.5 percent when compared with the existing rate under Rate Schedule INT-FT2, and an increase of 27 percent when compared with the existing rate under Rate Schedule INT-FT3. The existing nonfirm transmission service Rate Schedule is being superseded by Rate Schedule INT-NFT3. Under Rate Schedule INT-NFT2, the rate for nonfirm point-to-point 230/345/500-kV transmission service is 2.00 mills per kilowatthour (kWh). The provisional rate for nonfirm point-to-point 230/345/500-kV transmission service under Rate Schedule INT-NFT3 is 1.74 mills per kWh. The provisional rate for nonfirm transmission service in Rate Schedule INT-NFT3 results in a decrease of 13 percent when compared with the existing rate under Rate Schedule INT-NFT2.

By Delegation Order No. 00-037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00-037.00 and 00-001.00C, and in compliance with 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA-130 and the proposed rates for Intertie transmission service into effect on an interim basis. The new Rate Schedules INT-FT4 and INT-NFT3 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: September 28, 2007.

**Clay Sell,**

*Deputy Secretary of Energy.*

**Department of Energy, Deputy Secretary**

[Rate Order No. WAPA-130]

**In the Matter of: Western Area Power Administration Rate Adjustment for the Pacific Northwest-Pacific Southwest Intertie Project; Order Confirming, Approving, and Placing the Pacific Northwest-Pacific Southwest Intertie Project Transmission Service Rates Into Effect on an Interim Basis**

These rates were established in accordance with section 302 of the Department of Energy (DOE)

<sup>1</sup> WAPA-71 was approved by the Deputy Secretary of Energy on January 31, 1996 (61 FR 4650), and confirmed and approved by FERC on a final basis on July 24, 1996, in Docket No. EF96-5191-000 (76 FERC ¶ 62061).

<sup>2</sup> WAPA-76 was approved by the Deputy Secretary of Energy on January 28, 1999 (64 FR 6344), and confirmed and approved by FERC on a final basis on June 22, 1999, in Docket No. EF99-5191-000 (87 FERC ¶ 61346).

<sup>3</sup> WAPA-91 was approved by the Deputy Secretary of Energy on August 15, 2000 (65 FR 52423). FERC accepted this extension pursuant to a letter order from Michael A. Coleman, Director, Division of Tariffs and Rates-West dated October 19, 2000, in Docket No. EF00-5191-000.

<sup>4</sup> WAPA-108 was approved by the Deputy Secretary of Energy on October 27, 2003 (68 FR 63083), and approved by FERC on a final basis on March 25, 2004, in Docket No. EF04-5191-000 (106 FERC ¶ 62227).

<sup>5</sup> WAPA-133 was approved by the Deputy Secretary of Energy on December 21, 2006 (71 FR 78189) and filed with FERC for informational purposes only, and docketed by FERC in Docket No. EF07-5191-000 on December 21, 2006.

Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy, the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00-037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

#### Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

*Administrator*: The Administrator of the Western Area Power Administration.

*Capacity*: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts.

*CROD*: Contract Rate of Delivery. The maximum amount of capacity made available to a customer for a period specified under a contract or service agreement.

*Customer*: An entity with a contract or service agreement that is receiving service from Western's Desert Southwest Region.

*Deficits*: Deferred or unrecovered annual expenses.

*DOE*: United States Department of Energy.

*DOE Order RA 6120.2*: An order outlining power marketing administration financial reporting and ratemaking procedures.

*Desert Southwest Region*: The Desert Southwest Customer Service Region of Western.

*Energy*: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kilowatthours.

*FERC*: Federal Energy Regulatory Commission

*Firm*: type of product and/or service that is available at the time requested by the customer.

*FRN*: Federal Register notice.

*FY*: Fiscal year; October 1 to September 30.

*Intertie*: Pacific Northwest-Pacific Southwest Intertie Project.

*kV*: Kilovolt—the electrical unit of measure of electric potential that equals 1,000 volts.

*kW*: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

*kWh*: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

*kWmonth*: Kilowattmonth—the electrical unit of the monthly amount of capacity.

*kWyear*: Kilowattyear—the electrical unit of the yearly amount of capacity.

*mill*: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.

*mills/kWh*: Mills per kilowatthour—a unit of charge.

*NEPA*: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

*Nonfirm*: A type of product and/or service not always available at the time requested by the customer.

*O&M*: Operation and Maintenance.

*Proposed Rate*: A rate that has been recommended by Western to the Deputy Secretary of Energy for approval.

*Provisional Rate*: A rate that has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary of Energy.

*PRS*: Power Repayment Study.

*Rate Brochure*: Documents prepared for public distribution explaining the rationale and background for the rate proposal contained in this rate order dated July 2006 and February 2007.

*Ratesetting PRS*: The PRS used for the rate adjustment proposal.

*Revenue Requirement*: The revenue required to recover annual expenses (such as O&M, purchased transmission capacity, interest and deferred expenses) and repay Federal investments and other assigned costs.

*Supporting Documentation*: A compilation of data and documents that support the Rate Brochure and the rate proposal.

*Western*: United States Department of Energy, Western Area Power Administration.

#### Effective Date

The new provisional rates will take effect on the first day of the first full billing period beginning on or after October 1, 2007, and will remain in effect until September 30, 2012, pending approval by FERC on a final basis.

#### Public Notice and Comment

Western followed the Procedures for Public Participation in Power and

Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. On May 15, 2006, Western's Desert Southwest Region mailed a notice announcing an informal meeting to all Intertie customers and interested parties. The informal meeting was held June 15, 2006, in Phoenix, Arizona. At this informal meeting, Western explained the rationale for the rate adjustment, presented proposed rates and answered questions.

2. A FRN was published on July 12, 2006, (71 FR 39310) officially announcing the proposed rates for transmission service, initiating a public consultation and comment period, and announcing the public information and public comment forums.

3. On July 28, 2006, Western's Desert Southwest Region mailed letters to all Intertie customers and interested parties transmitting a copy of the published FRN (71 FR 39310).

4. On August 17, 2006, Western's Desert Southwest Region held a public information forum in Phoenix, Arizona. Western explained the proposed rates and potential changes to the proposed rates, answered questions, and provided rate brochures and presentation handouts.

5. On August 24, 2006, Western's Desert Southwest Region held a public comment forum in Phoenix, Arizona to give the public an opportunity to comment for the record. There were no comments at this forum.

6. Western received no comment letters during the consultation and comment period, which ended October 10, 2006.

7. A FRN was published on December 28, 2006 (71 FR 78189), extending the public process for the rate adjustment and announcing additional public information and public comment forums.

8. On December 29, 2006, Western's Desert Southwest Region mailed letters to all Intertie customers and interested parties transmitting a copy of the published FRN (71 FR 78189).

9. On February 8, 2007, Western's Desert Southwest Region held an additional public information forum in Phoenix, Arizona. Western explained alternatives to the proposed rates, answered questions, and provided presentation handouts.

10. On February 26, 2007, Western's Desert Southwest Region sent written responses to customers' questions that were remaining from the additional public information forum.

11. On February 27, 2007, Western's Desert Southwest Region held an additional public comment forum in Phoenix, Arizona to give the public an opportunity to comment for the record. There were no comments at this forum.

12. Western received one comment letter during the extended consultation and comment period, which ended March 28, 2007. All formally submitted comments have been considered in preparing this Rate Order.

13. Western provided a Web site for information about this rate adjustment process. The Web site is located at <http://www.wapa.gov/dsw/pwrmkt/Intertie/RateAdjust>.

**Comments**

Written comments were received from the following organization: Arizona Power Authority.

**Project Description**

The Intertie was authorized by Section 8 of the Pacific Northwest Power Marketing Act of August 31, 1964 (16 U.S.C. 837g). The basic purpose of the Intertie was to provide, through transmission system interconnections among certain Federal and non-Federal power systems, maximum utilization of power resources to meet growing demands. This purpose was to be accomplished through the exchange of summer-winter surplus peaking capacity between the northwest and southwest to reduce capital expenditures for new generating capacity; the sale of northwest secondary energy to the southwest; the sale of southwest energy to the northwest to "firm" peaking hydroelectric sources during critical water years; conservation of significant amounts of fuel through the use of surplus hydroelectric energy; and increased efficiency in the operation of hydroelectric and thermal resources. As authorized, the Intertie was to be a cooperative construction venture by Federal and non-Federal entities,

incorporating the capability for alternating current (AC) and direct current (DC) transmission service.

The Lower Colorado Region, Bureau of Reclamation (Reclamation), U.S. Department of the Interior, was assigned construction jurisdiction for: (i) The Celilo-Mead 750-kV DC transmission line from the Oregon-Nevada border to Mead Substation; (ii) Mead Substation; and (iii) all facilities south of Mead Substation. Several delays in construction funding for the Celilo-Mead 750-kV DC transmission line revised its estimated in-service date to the point that potential users withdrew their interest. This, and the subsequent lack of congressional funding, resulted in the May 1969 indefinite postponement of the Celilo-Mead 750-kV DC transmission line construction. The only facilities constructed were Mead Substation and all facilities south of Mead Substation, which provide AC transmission service. Pursuant to section 302 of the Department of Energy Organization Act (42 U.S.C. 7152), dated August 4, 1977, these Reclamation constructed facilities were transferred to Western.

Western's Desert Southwest Region administers these facilities as a stand-alone transmission project for operational, financial, and repayment purposes. The transmission facilities consist of a 256-mile, 500-kV transmission line from Mead Substation (Nevada) to Perkins Substation (Arizona); a 202-mile, 500-kV transmission line from Mead Substation to Adelanto Switching Substation (California); a 238-mile, 345-kV transmission line from Mead Substation to Liberty Substation (Arizona); a 19-mile, 230-kV transmission line from Liberty Substation to Westwing Substation (Arizona); and a 22-mile, 230-kV transmission line from Westwing Substation to Pinnacle Peak Substation (Arizona).

**Power Repayment Study—Transmission Service Rates**

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the Intertie revenues. Repayment criteria are based on law, policies, including DOE Order RA 6120.2, and authorizing legislation. To meet the Cost Recovery Criteria outlined in DOE Order RA 6120.2, a revised study and rate adjustment have been developed to demonstrate that sufficient revenues will be collected to meet future obligations.

The provisional rates for Intertie will become effective on an interim basis on the first day of the first full billing period beginning on or after October 1, 2007. Under Rate Schedule INT-FT4, the provisional rate for Intertie 230/345/500-kV firm transmission service will result in a rate decrease of approximately 11.5 percent when compared to the existing rate for Intertie 500-kV firm transmission service in Rate Schedule INT-FT2, and a rate increase of 27 percent when compared to the existing rate for Intertie 230/345-kV firm transmission service in Rate Schedule INT-FT3. The current rate for Intertie 500-kV firm transmission service under Rate Schedule INT-FT2 is \$17.23 per kWyear. The current rate for Intertie 230/345-kV firm transmission service under Rate Schedule INT-FT3 is \$12 per kWyear. The provisional rate for Intertie 230/345/500-kV firm transmission service is \$15.24 per kWyear. Under Rate Schedule INT-NFT3, the provisional rate for Intertie 230/345/500-kV nonfirm transmission service will result in a rate decrease of 13 percent. The current rate under Rate Schedule INT-NFT2 is 2.00 mills/kWh. The provisional rate is 1.74 mills/kWh.

**Existing and Provisional Rates**

A comparison of the existing and provisional rates for Intertie transmission service follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES: PACIFIC NORTHWEST-PACIFIC SOUTHWEST INTERTIE PROJECT

Transmission service	Existing rates	Provisional rates (effective 10/1/07)	Change
230/345-kV Firm .....	\$12.00/kWyear .....	\$15.24 /kWyear .....	27.0%
500-kV Firm .....	\$17.23 /kWyear .....	\$15.24 /kWyear .....	(11.5%)
230/345/500-kV Nonfirm .....	2.00 mills/kWh .....	1.74 mills/kWh .....	(13.0%)

**Certification of Rates**

Western's Administrator certified that the provisional rates for Intertie transmission service under Rate Schedules INT-FT4 and IN-NFT3 are the lowest possible rates consistent with sound business principles. The

provisional rates were developed following administrative policies and applicable laws.

**Intertie Transmission Rate Discussion**

According to Reclamation Law, Western must establish transmission

rates sufficient to recover operation, maintenance, purchased transmission and interest expenses, and repay transmission investment.

The Intertie transmission rates are insufficient due to higher-than-expected costs for O&M and purchased

transmission and lower-than-projected sales of 500-kV transmission service that have occurred since the existing rates were established. Future cost estimates for O&M and purchased transmission have increased in the Ratesetting PRS. In addition, sales forecasts of 500-kV transmission service over the next five years have been adjusted to allow Western additional time to market this service.

The lower-than-projected sales of 500-kV transmission service and higher-than-expected costs for O&M and purchased transmission have created deficits in the Intertie PRS and these conditions are expected to continue through FY 2010. These deficits are scheduled to be repaid within the allowable period under the provisional rates.

The existing rates for Intertie transmission service under Rate Schedules INT-FT2, INT-FT3, and INT-NFT2 expire December 31, 2007. Effective October 1, 2007, Rate Schedules INT-FT2, INT-FT3, and INT-NFT2 will be superseded by the new rates in Rate Schedules INT-FT4 and INT-NFT3. The provisional rates for Intertie transmission service consist

of a firm point-to-point rate and a nonfirm point-to-point rate. The provisional firm point-to-point rate is \$15.24 per kWyear, and the provisional nonfirm point-to-point rate is 1.74 mills/kWh.

Western intends to modify its billing practices for Intertie long-term firm transmission service. Existing billing practices require customers to pay for long-term firm transmission service after the fact, usually one month after the service is provided. In today's business and economic environment, a customer's financial and credit status can change quickly, and under existing billing practices, Western can experience up to four months of uncollectible revenue before it becomes apparent that a customer is unable to pay its transmission service bills. On more than one occasion, Western has dealt with uncollectible revenue due to a customer's bankruptcy or credit rating change. Western's risk of non-payment is further increased by the fact that several of the Intertie long-term firm transmission service customers are not traditional preference customers. Many are independent power producers and other entities whose financial status can

significantly and rapidly change due to the volatile energy market. Uncollectible revenue places all ratepayers at risk, since Western assumes full collection of all revenue when developing rates for long-term firm transmission service. To the extent that revenue is uncollectible, the rate will be insufficient to recover revenue requirements, which will result in upward pressure on rates for long-term transmission service.

To mitigate the credit risk exposure and the uncollectible revenue vulnerability, Western will require Intertie customers to pay for long-term firm transmission service one month in advance. This requirement is incorporated into Rate Schedule INT-FT4 and will be implemented upon the appropriate revision to Western's Open Access Transmission Tariff and notice to long-term firm transmission service customers.

*Statement of Revenue and Related Expenses*

The following table provides a summary of projected revenue and expense data for the Intertie firm transmission rate through the 5-year provisional rate approval period.

**INTERTIE FIRM TRANSMISSION RATE: COMPARISON OF 5-YEAR RATE PERIOD (FY 2008-FY 2012), TOTAL REVENUES AND EXPENSES**

	Existing rate (\$000)	Proposed rate (\$000)	Difference (\$000)
Total Revenues .....	\$140,577	\$159,709	\$19,132
<b>Revenue Distribution</b>			
Expenses:			
O&M .....	21,899	32,043	10,144
Purchased Transmission .....	0	2,755	2,755
Abandoned Project .....	2,397	2,397	0
Interest .....	90,569	99,305	8,736
Other .....	2,174	3,699	1,525
Total Expenses .....	117,039	140,199	23,160
Principal Payments:			
Capitalized Expenses .....	23,493	19,465	(4,028)
Original Project and Additions .....	0	0	0
Replacements .....	45	45	0
Total Principal Payments .....	23,538	19,510	(4,028)
Total Revenue Distribution .....	140,577	159,709	19,132

*Basis for Rate Development*

The existing rates for Intertie transmission service under Rate Schedules INT-FT2, INT-FT3, and INT-NFT2 expire December 31, 2007. The existing rates no longer provide sufficient revenues to pay all annual costs, including interest, and repayment of investment within the allowable period. The adjusted rates reflect cost

increases primarily in O&M, purchased transmission, and interest. The provisional rates will provide sufficient revenue to pay all annual costs, including interest, and repayment of investment within the allowable periods. The provisional rates will take effect on October 1, 2007, to correspond with the start of the Federal fiscal year,

and will remain in effect through September 30, 2012.

*Comments*

The comments and responses regarding the firm transmission rate, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

*Comment:* A customer supports Western's rate adjustment proposal which includes having all deficits paid by FY 2017 and commends Western for exploring methods to control costs and stabilize rates.

*Response:* Western appreciates the support it has received during the public process for this rate adjustment proposal. Western will continue to work with customers to control costs and maintain stable transmission service rates.

*Comment:* A customer supports Western's proposal to modify its existing billing practices and require payment in advance for Intertie long-term firm 230/345/500-kV transmission service.

*Response:* Western acknowledges the comment in support of the modification in billing practices for Intertie long-term firm 230/345/500-kV transmission service. Western will proceed with implementing the change as specified in this rate order.

#### Availability of Information

Information about this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western and used to develop the provisional rates, is available for public review in the Desert Southwest Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona.

#### Ratemaking Procedure Requirements

##### Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

##### Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

##### Submission to the Federal Energy Regulatory Commission

The provisional interim rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to FERC for confirmation and final approval.

#### Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective October 1, 2007, Rate Schedules INT–FT4 and INT–NFT3 for the Pacific Northwest-Pacific Southwest Intertie Project of the Western Area Power Administration. The rate schedules shall remain in effect on an interim basis pending FERC's confirmation and approval of them or substitute rates on a final basis through September 30, 2012.

Dated: September 28, 2007.

#### Clay Sell,

*Deputy Secretary of Energy.*

Rate Schedule INT–FT4  
(Supersedes Rate Schedules INT–FT2  
and INT–FT3)

#### United States Department of Energy; Western Area Power Administration Pacific Northwest-Pacific Southwest Intertie Project

##### *Schedule of Rates for Long-Term and Short-Term Firm Point-to-Point 230/ 345/500-KV Transmission Service*

*Effective:* The first day of the first full billing period beginning on or after October 1, 2007, and will remain in effect through September 30, 2012, or until superseded by another rate schedule, whichever occurs first.

*Available:* In the area served by the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) 230/345/500-kV transmission system.

*Applicable:* To firm point-to-point transmission service customers where capacity and energy are supplied to the Intertie 230/345/500-kV transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Intertie 230/345/500-kV transmission system.

*Character and Conditions of Service:* Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by service agreement or contract.

*Long-Term Rate:* For transmission service one year or longer, the rate is \$15.24 for each kilowatt (kW) per year, payable monthly at the rate of \$1.27 for each kW per month.

*Short-Term Rates:* For transmission service up to one year, the maximum rate for each kW is as follows:

Monthly: \$1.27  
Weekly: \$0.2931  
Daily: \$0.0418  
Hourly: 1.74 mills

Discounts may be offered from time-to-time in accordance with Western's

#### Open Access Transmission Tariff (OATT).

*Billing:* Western will bill firm point-to-point transmission service customers monthly by applying the rates listed above to the amount of capacity reserved. Upon the appropriate revision to Western's OATT and notification to long-term firm transmission customers, payment for service will be required one month in advance of said service.

*Adjustments for Reactive Power:* There shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points, except when such transfers may be mutually agreed upon by the customer and Western or their authorized representatives.

*Adjustments for Losses:* Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service agreement or contract.

*Overrun of Capacity Reserved:* Western will assess a charge for unauthorized use of transmission service at a rate equal to two (2) times the applicable rate for the service at issue. The charge will be applied to use in excess of the reservation amount ("the overrun"), which shall be the difference between the amount of transmission service actually used by the customer less the amount of transmission service the customer has reserved. The customer will incur the charge for an overrun during the calendar month or for the period of transmission service if such service is for a term of less than one month.

Rate Schedule INT–NFT3  
(Supersedes Rate Schedule INT–NFT2)

#### United States Department of Energy; Western Area Power Administration Pacific Northwest-Pacific Southwest Intertie Project

##### *Schedule of Rate for Nonfirm 230/345/ 500-kV Transmission Service*

*Effective:* The first day of the first full billing period beginning on or after October 1, 2007, and will remain in effect through September 30, 2012, or until superseded by another rate schedule, whichever occurs first.

*Available:* In the area served by the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) 230/345/500-kV transmission system.

*Applicable:* To nonfirm transmission service customers where capacity and energy are supplied to the Intertie 230/345/500-kV transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the

Intertie 230/345/500-kV transmission system.

**Character and Conditions of Service:** Interruptible transmission service on a three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery established by service agreement or in advance by Western. Curtailment conditions shall be determined by Western and in accordance with Western's Open Access Transmission Tariff (OATT).

**Rate:** The nonfirm transmission service rate is 1.74 mills for each kilowatt per hour. Discounts may be offered from time-to-time in accordance with Western's OATT.

**Billing:** Western will bill nonfirm transmission service customers monthly by applying the rate listed above to the amount of capacity reserved.

**Adjustments for Reactive Power:** There shall be no entitlement to transfer of reactive kilovolt amperes at delivery points, except when such transfers may be mutually agreed upon by the customer and Western or their authorized representatives.

**Adjustment for Losses:** Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service agreement or contract.

[FR Doc. E7-19914 Filed 10-9-07; 8:45 am]

BILLING CODE 6450-01-P

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0409; FRL-8150-3]

### The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality/Pesticide Disposal (WC/WQPD); Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Working Committee on Water Quality & Pesticide Disposal (WC/WQPD) will hold a 2-day meeting, beginning on October 29, 2007 and ending October 30, 2007. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on October 29, 2007 from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on October 30, 2007.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held at EPA, 2777 Crystal Dr., One Potomac Yard South, 4<sup>th</sup> Floor South Conference Center, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Georgia McDuffie, Field and External Affairs Division, (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0195; fax number: (703) 308-1850; e-mail address: [mcduffie.georgia@epa.gov](mailto:mcduffie.georgia@epa.gov) or Grier Stayton, Executive Secretary, P.O. Box 466 Milford, DE 19963; telephone number: (302) 422-8152; fax: (302) 422-2435; email: [grierstayton@aapco-sfireg@comcast.net](mailto:grierstayton@aapco-sfireg@comcast.net).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. "Potentially affected entities may include, but are not limited to: Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

###### B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0409 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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

#### II. Tentative Agenda

1. Buffers to Protect Surface Water
2. OPP Surface Water and Ground Water Benchmarks
3. USGS Water Quality Pesticide Projects
4. Container Recycling
5. Endangered Species: Water Quality Issues
6. Performance Measures, "Pesticides of Interest" List, On-line Reporting
7. SFIREG WQ/PD State Reporting and Participation
8. Exposure Modeling Public Meeting: Activities Report
9. SFIREG Disposal White Paper and EPA Follow-up
10. Pesticide Degradate Information Tracking
11. AAPCO/SFIREG & ASIWPCA Benchmarks Project
12. Inert Ingredient WQ impacts: Nonylphenol Exthoxyates
13. Ground Water Advisory Statement & Label Review Manual, Chapter 8
14. Atrazine: Post-IREG OPP Activities Update
15. Office Water Atrazine Implementation Workplan - Region 5
16. EPA Update/Briefing:
  - a. Office of Pesticide Programs Update
  - b. Office of Enforcement Compliance Assurance Update

#### List of Subjects

Environmental protection.

Dated: September 26, 2007.

**William R. Diamond,**

*Director, Field External Affairs Division,  
Office of Pesticide Programs*

[FR Doc. E7-19655 Filed 10-9-07; 8:45 am]

BILLING CODE 6560-50-S

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8480-4]

### Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Notification of a Public Teleconference of the NO<sub>x</sub> and SO<sub>x</sub> Secondary NAAQS Review Panel

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) Science

Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen (NO<sub>x</sub>) and Sulfur Oxides (SO<sub>x</sub>) Secondary National Ambient Air Quality Standards (NAAQS) Review Panel (CASAC Panel) to conduct a consultation on EPA's Draft Plan for Review of the Secondary National Ambient Air Quality Standards for Nitrogen Dioxide and Sulfur Dioxide (September 2007).

**DATES:** The teleconference meeting will be held on Tuesday, October 30, 2007, from 1 p.m. to 5 p.m. (Eastern Time).

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes to obtain general information concerning this public teleconference may contact Ms. Kyndall Barry, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343-9868; fax: (202) 233-0643; or e-mail at: [barry.kyndall@epa.gov](mailto:barry.kyndall@epa.gov). General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at <http://www.epa.gov/sab>.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including NO<sub>x</sub> and SO<sub>x</sub>. EPA is currently reviewing the secondary (welfare-based) NAAQS for NO<sub>x</sub> and SO<sub>x</sub>. The purpose of this public teleconference meeting is to provide consultative advice on the Agency's Draft Plan for Review of the Secondary National Ambient Air Quality Standards for Nitrogen Dioxide and Sulfur Dioxide (September 2007).

*Availability of Meeting Materials:* The Draft Plan for Review of the Secondary

*National Ambient Air Quality Standards for Nitrogen Dioxide and Sulfur Dioxide (September 2007)* is available on the EPA's Web site at [http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr\\_pd.html](http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_pd.html). For questions and information regarding the Agency's draft document, please contact Dr. Anne Rea at (919) 541-0053 or [rea.anne@epa.gov](mailto:rea.anne@epa.gov). The agenda and other materials for this CASAC teleconference will be posted on the SAB Web site at [http://www.epa.gov/sab/panels/casac\\_nox\\_and\\_sox\\_secondary\\_panel.htm](http://www.epa.gov/sab/panels/casac_nox_and_sox_secondary_panel.htm) prior to the meeting.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for the CASAC NO<sub>x</sub> and SO<sub>x</sub> Secondary NAAQS Review Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Ms. Barry, DFO, in writing (preferably via e-mail), by October 23, 2007, at the contact information noted above, to be placed on the list of public speakers for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by the same date, so that the information may be made available to the CASAC Panel for its consideration prior to this teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

*Accessibility:* For information on access or services for individuals with disabilities, please contact Ms. Barry at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: October 2, 2007.

**Anthony F. Maciorowski,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. E7-19938 Filed 10-9-07; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2007-0833; FRL-8150-7]

**Sodium Fluoride Risk Assessment; Notice of Availability and Risk Reduction Options**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's risk assessment, and related documents for the pesticide Sodium Fluoride and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for Sodium Fluoride through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

**DATES:** Comments must be received on or before December 10, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0833, 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 docket ID number EPA-HQ-OPP-2007-0833 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 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 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 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:** SanYvette Williams, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7702; fax number: (703) 308-6467; e-mail address: [williams.sanyvette@epa.gov](mailto:williams.sanyvette@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?*

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for Sodium Fluoride and soliciting public comment on risk management ideas or proposals. Sodium Fluoride is currently registered for commercial use only as a wood preservative for utility poles and railroad ties. Sodium Fluoride products are used as supplemental wood treatments and are not intended for primary wood preservative or pressure treated wood preservation. EPA developed the risk assessments and risk characterization for Sodium Fluoride through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for Sodium Fluoride. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as a dermal absorption study or a repeated dose dermal toxicity study (90-day) to determine the route-specific NOAEL. This information could refine the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for Sodium Fluoride. There are risks of concern associated with brush on applications of sodium fluoride to distribution and transmission utility poles. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of

environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to Sodium fluoride compared to the general population.

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 the issues, and degree of public concern associated with each pesticide. For Sodium Fluoride a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessments and/or other factors. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for Sodium Fluoride. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

#### *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, antimicrobials, sodium fluoride.

Dated: September 26, 2007.

**Betty Shackelford,**

*Acting Director, Antimicrobials Division,  
Office of Pesticide Programs.*

[FR Doc. E7-19940 Filed 10-9-07; 8:45 am]

**BILLING CODE 6560-50-S**

## **ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2004-0340; FRL-8151-8]

### **Disulfoton; Order to Amend Registrations to Terminate Uses**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellation, voluntarily requested by the registrant and accepted by the Agency, of certain products containing the pesticide disulfoton, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This termination order follows a December 15, 2004 **Federal Register** Notice of Receipt of Request (69 FR 75061) (FRL-7689-8) from the disulfoton registrant to voluntarily terminate the following uses of their 15% granular formulation of disulfoton (Di-Syston 15G): beans, Brussels sprouts, cabbage, cauliflower, cotton, peanuts, peppers, radish grown for seed, and clover grown for seed. Di-Syston 15G is not the last disulfoton product registered for use in the United States. The registrant will retain use of Di-Syston 15G on Fraser fir Christmas trees in North Carolina and coffee trees in Puerto Rico, provided it is used with a closed system applicator. The registrant will retain the registration of Di-Syston 8E, the liquid emulsifiable concentrate, which must also be used with closed system applicators. In the December 15, 2004 notice, EPA indicated that it would issue an order implementing the amendments to terminate the subject uses, unless the Agency received substantive comments within the 180 day comment period that would merit its further review of these requests, or unless the registrant withdrew their request within this period. The Agency received comments on the notice but none merited its further review of the requests. The registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested Voluntary Termination of Certain Uses. Any distribution, sale, or use of the Di-Syston 15G products subject to this cancellation order is permitted only in accordance with the terms of this order,

including any existing stocks provisions.

**DATES:** The use terminations are effective October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Eric Miederhoff, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8028; fax number: (703) 308-7070; e-mail address: [miederhoff.eric@epa.gov](mailto:miederhoff.eric@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. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2004-0340. 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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

##### **II. What Action is the Agency Taking?**

This notice announces an amendment to terminate uses, as requested by registrants, of certain end-use disulfoton products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.— DISULFOTON PRODUCT REGISTRATIONS AFFECTED BY AMENDMENT TO TERMINATE USES

EPA Registration Number	Product Name
264-723	Di-Syston 15G

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2—REGISTRANTS OF CANCELLED AND/OR AMENDED DISULFOTON PRODUCTS

EPA Company Number	Company Name and Address
264	Bayer CropSciences, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709

### III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period, EPA received two comments on the December 15, 2004 Notice. One comment requested cancellation of the use of Di-Syston 15G on Fraser fir Christmas trees in North Carolina and coffee trees in Puerto Rico. However, the comment did not contest any specific aspect of the Agency's evaluation of these uses. A second comment protested the cancellation of Di-Syston 15G usage on winter wheat. However, the December 15, 2004 Notice did not list winter wheat among the uses for voluntary termination. The 2002 disulfoton RED stipulated that Di-Syston 15G wheat usage would be phased out by 2005. The Agency will evaluate this comment and publish the results in a separate Federal Register entry. For these reasons, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation.

### IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested use terminations of disulfoton registrations identified in Table 1. Accordingly, the Agency orders that the disulfoton product registrations identified in Table 1 of Unit II are hereby canceled and amended to terminate the affected uses. Any distribution, sale, or use of existing stocks of the products identified in Table 1 in a manner inconsistent with any of the Provisions for Disposition of

Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

### V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

### VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

The Agency will allow the continued sale and/or use of existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 26, 2007.

### Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.  
[FR Doc. E7-19816 Filed 10-9-07; 8:45 am]

BILLING CODE 6560-50-S

### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-RCRA-2006-0796; FRL-8480-2]

RIN 2050-AE81

### Notice of Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments; Extension of Comment Period

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

**ACTION:** Notice of Data Availability; Extension of Comment Period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the comment period for the Notice of Data Availability (NODA) entitled "Notice of

Data Availability on the Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments." This notice announces the availability of new information and data concerning the management of coal combustion wastes (CCW) in landfills and surface impoundments and will be used by the Agency in determining 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. This NODA was published on August 29, 2007 (72 FR 49714), and the comment period was scheduled to end on November 27, 2007. However, a number of environmental groups have requested additional time to respond to the issues raised in the NODA and its accompanying documents. Therefore, we are extending the comment period an additional 60 days, which would extend the comment period to January 28, 2008.

**DATES:** The comment period is extended from the original closing date of November 27, 2007 to January 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2006-0796, by one of the following methods:

- <http://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](mailto: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 (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), 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](http://www.regulations.gov) or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this action, identify the relevant information by docket entry numbers and page numbers. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

**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](mailto:livnat.alexander@epa.gov). For more information on this rulemaking, please visit <http://www.epa.gov/epaoswer/other/fossil/index.htm/>.

**SUPPLEMENTARY INFORMATION:** The NODA that is the subject of this notice, and which was published in the **Federal Register** on August 29, 2007 (72 FR 49714), announces the availability of new information and data contained in three documents that the Agency is requesting public comments on, concerning the management of CCW in landfills and surface impoundments. The three documents that the Agency is requesting comments on are: 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 is soliciting 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 the NODA a rulemaking petition submitted by a number of citizens' groups. Furthermore, the Agency has included in the docket to the NODA two approaches regarding the management of CCW, one prepared by the electric utility industry and the other prepared by a number of citizens' groups. The Agency will consider all the information provided through the NODA, the comments and new information submitted on the NODA, 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.

The comment period for the NODA was scheduled to end on November 27, 2007. However, a number of environmental groups (Earthjustice, Environmental Integrity Project, Clean Air Task Force, Kentucky Resources Council, Army for a Clean Environment, and Delaware Riverkeeper Network) have requested that EPA extend the comment period by 75 days, noting that

additional time is needed in order to comment meaningfully on the information contained in the NODA and to perform extensive analysis on several documents, some of which are highly technical. The commenters also noted that, due to the length and complexity of the draft risk assessment ("Human and Ecological Risk Assessment of Coal Combustion Wastes"), it will be necessary to engage expert review that will consequently increase the time necessary to prepare their comments.

EPA believed that the 90-day public comment period originally established was reasonable. However, since the Agency will be considering all the information provided through the comments and new information submitted on the NODA, as well as the results of a subsequent peer review of the risk assessment, we believe it is important that commenters have adequate time to analyze the data noticed in the NODA so that they may provide informed and meaningful comments to the Agency. Therefore, we have decided to extend the comment period by 60 days, thereby extending the comment period to 150 days. We believe an additional 60 days is adequate for commenters to analyze the data noticed in the NODA and available in the docket to the NODA. Because the 60-day extension ends on January 26, 2008, which is a Saturday, the comment period will actually be extended until the following Monday, January 28, 2008.

Dated: September 28, 2007.

**Matthew Hale,**

*Director, Office of Solid Waste.*

[FR Doc. E7-19935 Filed 10-9-07; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 07-4080]

### GSA Approves Renewal of North American Numbering Council Charter Through September 27, 2009

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On October 2, 2007, the Commission released a public notice announcing GSA approves renewal of North American Numbering Council charter through September 27, 2009. The intended effect of this action is to make the public aware of the renewal of the North American Numbering Council charter.

**DATES:** Renewed through September 27, 2009.

**ADDRESSES:** Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5-C162, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418-1466 or [Deborah.Blue@fcc.gov](mailto:Deborah.Blue@fcc.gov). The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** Released October 2, 2007.

The GSA has renewed the charter of the North American Numbering Council (Council) through September 27, 2009. The Council will continue to advise the Federal Communications Commission (Commission) on rapidly evolving and competitively significant numbering issues facing the telecommunications industry.

In October 1995, the Commission established the North American Numbering Council, a federal advisory committee created pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988), to advise the Commission on issues related to North American Numbering Plan (NANP) administration in the United States, including local number portability administration issues. The original charter of the Council was effective on October 5, 1995, establishing an initial two-year term. Amended charters were filed on October 5, 1997, October 5, 1999, October 5, 2001, October 5, 2003, and September 26, 2005 each renewing the term of the charter for an additional two years.

Since the last charter renewal, the Council has provided the Commission with critically important recommendations regarding number administration, such as the development and recommendation of interim and permanent guidelines for pseudo Automatic Number Identification administration. In addition, the Council developed and recommended technical requirements for a request for proposals associated with a new Pooling Administrator (PA) contract. The Council also provided detailed evaluations of the North American Numbering Plan Administrator (NANPA) and the PA. The Council will continue to evaluate the NANPA's and the PA's performances annually.

Moreover, the Council is presently considering and formulating recommendations on other important numbering-related issues that will require work beyond the term of the present charter. The term of the

Council's renewed charter begins September 27, 2007 and runs through September 27, 2009.

The value of this federal advisory committee to the telecommunications industry and to the American public cannot be overstated. Numbers are the means by which consumers gain access to, and reap the benefits of, the public switched telephone network. The Council's recommendations to the Commission will facilitate fair and efficient number administration in the United States, and will ensure that numbering resources are available to all telecommunications service providers on a fair and equitable basis, consistent with the requirements of the Telecommunications Act of 1996.

Federal Communications Commission.

**Marilyn Jones,**

*Attorney, Competition Policy Division, Wireline Competition Bureau.*

[FR Doc. E7-19939 Filed 10-9-07; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 07-4036]

### Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (the "Commission") debar Mr. Brown from the schools and libraries universal service support mechanism for a period of three years because of violation of 18 U.S.C. 1341. Therefore, the Enforcement Bureau is commencing debarment proceedings against him.

**DATES:** Debarment commences on the date Mr. Richard E. Brown receives the debarment letter or October 10, 2007, whichever date come first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418-0843 or e-mail at [diana.lee@fcc.gov](mailto:diana.lee@fcc.gov). If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by e-mail at [vickie.robinson@fcc.gov](mailto:vickie.robinson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission debarred Mr. Brown from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 521 and 47 CFR 0.111(a)(14). Attached is the debarment letter, Notice of Suspension and Initiation of Debarment Proceedings, DA 07-4036, which was mailed to Mr. Brown and released on September 25, 2007. The complete text of the notice of suspension and initiation of debarment proceedings, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY-B420, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, facsimile (202) 488-5563, or via e-mail [http://www.bcpweb.com](mailto:www.bcpweb.com).

Federal Communications Commission.

**Hillary S. DeNigro,**

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

The suspension letter follows:

September 25, 2007.

[DA 07-4036]

Via Certified Mail—Return Receipt Requested and E-Mail.

Mr. Richard E. Brown, c/o Douglas McNabb, Esq., McNabb Associates PC, JP Morgan Chase Tower, 600 Travis Street, Suite 7070, Houston, TX 77002.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB-07-IH-5369.

Dear Mr. Brown: The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction for mail fraud in violation of 18 U.S.C. 1341 in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").<sup>1</sup> Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.<sup>2</sup>

<sup>1</sup> Any further reference in this letter to "your conviction" refers to your February 13, 2007 guilty plea and subsequent conviction of three counts of mail fraud. *United States v. Richard E. Brown*, Criminal Docket No. 3:07-CR-29 (RNC), Plea Agreement (D.Conn. filed Feb. 13, 2007 and entered Feb. 14, 2007) ("*Brown Plea Agreement*"); *United States v. Richard E. Brown*, 3:07-CR-29 (RNC), Judgment (D.Conn. filed Sept. 6, 2007 and entered Sept. 7, 2007) ("*Brown Judgment*").

<sup>2</sup> 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve

## I. Notice of Suspension

The Commission has established procedures to prevent persons who have “defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism” from receiving the benefits associated with that program.<sup>3</sup> You pled guilty to three counts of mail fraud for activities in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.<sup>4</sup> While employed at Southwestern Bell Communications (“SBC”), the prime contractor servicing these school districts, you recommended subcontractors to perform telecommunications upgrades in four Connecticut school districts. You also reviewed invoices submitted by the subcontractors to SBC for payment that SBC then submitted to the Universal Service Administrative Company (“USAC”) for reimbursement from the E-Rate fund.<sup>5</sup> You admitted to participating in schemes to defraud the E-Rate program where fictitious bills for upgrades that were never performed were submitted to USAC for reimbursement from the E-Rate fund.<sup>6</sup> In another fraudulent scheme in which you admitted to being a participant, engineering services for upgrade projects were billed at inflated rates and the associated invoices were also submitted to USAC for E-Rate reimbursement.<sup>7</sup> In sum, these schemes generated approximately \$1,564,768 in fictitious expenses and approximately \$956,203 of these expenses ultimately were submitted to the USAC for reimbursement from E-Rate fund.<sup>8</sup>

Pursuant to section 54.521(a)(4) of the Commission’s rules,<sup>9</sup> your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund

universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

<sup>3</sup> See *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225, ¶ 66 (2003) (“*Second Report and Order*”). The Commission’s debarment rules define a “person” as “[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.” 47 CFR 54.521(a)(6).

<sup>4</sup> See generally *United States v. Richard E. Brown*, Criminal Docket No. 3:07–CR–29 (RNC), Information (D.Conn. filed and entered Jul. 28, 2006) (“*Information*”); *Brown Plea Agreement* at 1; *Brown Judgment* at 1.

<sup>5</sup> See *Information* at 2–3.

<sup>6</sup> See *Information* at 1–8.

<sup>7</sup> See *Information* at 8–10.

<sup>8</sup> See *Information* at 3, 5, 8; <http://www.usdoj.gov/usaofct/Press2007/20070829-3.html> (Department of Justice Press Release dated August 29, 2007) (last accessed September 12, 2007) (“*DOJ August 29 Press Release*”). See also Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Scott A. Federowicz, c/o Paul H.D. Stoughton, Conway & Stoughton, LLP, Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–5171, (rel. June 27, 2007) (“*Federowicz Suspension Letter*”); 72 FR 39425 (Jul. 18, 2007).

<sup>9</sup> 47 CFR 54.521(a)(4). See *Second Report and Order*, 18 FCC Rcd at 9225–9227, ¶¶ 67–74 (2003).

mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.<sup>10</sup> Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.<sup>11</sup>

Suspension is immediate pending the Bureau’s final debarment determination. In accordance with the Commission’s debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.<sup>12</sup> Such requests, however, will not ordinarily be granted.<sup>13</sup> The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.<sup>14</sup> Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.<sup>15</sup>

## II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.521(c) of the Commission’s rules.<sup>16</sup> Therefore, pursuant to section 54.521(a)(4) of the Commission’s rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter

<sup>10</sup> *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

<sup>11</sup> *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

<sup>12</sup> *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

<sup>13</sup> *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

<sup>14</sup> 47 CFR 54.521(e)(5).

<sup>15</sup> See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

<sup>16</sup> “Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.” 47 CFR 54.521(c). Such activities “include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section [47 CFR] § 54.500 et seq.” 47 CFR 54.521(a)(1).

or of publication in the **Federal Register**.<sup>17</sup> Absent extraordinary circumstances, the Bureau will debar you.<sup>18</sup> Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.<sup>19</sup> If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.<sup>20</sup>

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.<sup>21</sup> The Bureau may, if necessary to protect the public interest, extend the debarment period.<sup>22</sup>

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to [diana.lee@fcc.gov](mailto:diana.lee@fcc.gov) and to [vickie.robinson@fcc.gov](mailto:vickie.robinson@fcc.gov).

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at [diana.lee@fcc.gov](mailto:diana.lee@fcc.gov). If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at [vickie.robinson@fcc.gov](mailto:vickie.robinson@fcc.gov).

Sincerely yours,

<sup>17</sup> See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

<sup>18</sup> *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

<sup>19</sup> See *id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

<sup>20</sup> *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

<sup>21</sup> *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

<sup>22</sup> *Id.*

Hillary S. DeNigro,  
Chief, Investigations and Hearings Division,  
Enforcement Bureau.

cc: Calvin B. Kurimay, Esq., Assistant United  
States Attorney.

Kristy Carroll, Esq., Universal Service  
Administrative Company (via e-mail).

[FR Doc. E7-19922 Filed 10-9-07; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 24, 2007.

**A. Federal Reserve Bank of Chicago**  
(Burl Thornton, Assistant Vice  
President) 230 South LaSalle Street,  
Chicago, Illinois 60690-1414:

1. *James P. Stein; Mary Ann  
Bramhall-Lambert; Thomas L. Lambert;  
Velma M. Lambert; as a family acting in  
concert; and William M. Parks,*  
*individually and in concert with Ann F.  
Parks,* all of Muscatine, Iowa, to acquire  
voting shares of Central Bancshares,  
Inc., and thereby indirectly Central State  
Bank, both of Muscatine, Iowa; Farmers  
and Mechanics Bank, Galesburg,  
Illinois; Freedom Security Bank,  
Coralville, Iowa; and West Chester  
Savings Bank, Washington, Iowa.

**B. Federal Reserve Bank of Kansas  
City** (Todd Offenbacker, Assistant Vice  
President) 925 Grand Avenue, Kansas  
City, Missouri 64198-0001:

1. *The Regnier Trust (Ann Regnier,  
trustee),* as general partner of the Robert  
D. and Ann Regnier Family Limited  
Partnership, Leawood, Kansas; Victor A.  
Regnier, Los Angeles, California;  
Catherine M. Regnier, Mission, Kansas;  
Ranch Mart Hardware (Robert D.  
Regnier, president); Regnier  
Investments, both of Shawnee Mission,  
Kansas; and Regnier Management LLC  
(Robert D. Regnier, managing member),

as general partner of the Regnier Family  
Limited Partnership; Regnier Family  
Limited Partnership II; and the Regnier  
Family Limited Partnership III, all of  
Shawnee Mission, Kansas, as members  
of the Regnier Family Group; to retain  
voting shares of Blue Valley Ban Corp.,  
and thereby indirectly retain voting  
shares of Bank of Blue Valley, both in  
Overland Park, Kansas.

Board of Governors of the Federal Reserve  
System, October 4, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-19919 Filed 10-9-07; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 2007.

**A. Federal Reserve Bank of Chicago**  
(Burl Thornton, Assistant Vice  
President) 230 South LaSalle Street,  
Chicago, Illinois 60690-1414:

1. *Greenfield Bancorporation, Ltd.,* to become a bank holding company by acquiring 100 percent of the voting shares of Union State Bank, both of Greenfield, Iowa.

**B. Federal Reserve Bank of  
Minneapolis** (Jacqueline G. King,  
Community Affairs Officer) 90  
Hennepin Avenue, Minneapolis,  
Minnesota 55480-0291:

1. *Dairyland Bancorp Inc.,* Bruce,  
Wisconsin; to merge with Gilman  
Corporation, and thereby indirectly  
acquire State Bank of Gilman, both of  
Gilman, Wisconsin.

Board of Governors of the Federal Reserve  
System, October 4, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-19920 Filed 10-9-07; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/). Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 2007.

**A. Federal Reserve Bank of New  
York** (Anne MacEwen, Bank  
Applications Officer) 33 Liberty Street,  
New York, New York 10045-0001:

1. *Standard Chartered PLC, Standard Chartered Holdings Limited, and Standard Chartered Bank*, all of London, United Kingdom; to acquire Harrison Lovegrove & Co. Limited, London, England, and thereby indirectly acquire Harrison Lovegrove Americas L.P., Houston, Texas, and thereby engage in providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, leveraged buyouts, recapitalizations, capital structurings, financing transactions and similar transactions, and conducting financial feasibility studies in accordance with Section 225.28(b)(6)(iii); and acting as agent for the private placement of securities, pursuant to Section 225.28(b)(7)(iii), both of Regulation Y.

**B. Federal Reserve Bank of Chicago** (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Capitol Bancorp, Ltd., and Capitol Development Bancorp Limited VIII*, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Community Bank of Lincoln (in organization), Lincoln, Nebraska, and thereby operate a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comment on this application must be received by November 5, 2007.

Board of Governors of the Federal Reserve System, October 4, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-19921 Filed 10-9-07; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council

**ACTION:** Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 25, 2007. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC., in Dining Room E on the Terrace Level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, October 23, by completing the form found online at: <https://www.federalreserve.gov/secure/forms/cacregistration.cfm>

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 1 p.m. The

Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

#### • Home Ownership and Equity Protection Act (HOEPA)

Members will discuss various issues related to the Board's rulemaking authority under HOEPA to address concerns about abusive lending practices in the home mortgage market.

#### • Regulation Z/Truth in Lending Act (TILA)

Members will discuss issues that have been raised in public comments on the proposed amendments to Regulation Z, which implements the Truth in Lending Act (TILA). The amendments would revise the disclosure requirements for open-end (revolving) plans that are not home-secured, including credit2186d accounts.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Kerslake, 202-452-6470.

Board of Governors of the Federal Reserve System, October 3, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E7-19842 Filed 10-9-07; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:30 a.m., Monday, October 15, 2007.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments,

reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

#### FOR FURTHER INFORMATION CONTACT:

Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202-452-2955.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 5, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 07-5021 Filed 10-5-07; 2:39 pm]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
<b>Transactions Granted Early Termination—09/24/2007</b>			
20072076 .....	UniCredito Italiano S.p.A .....	Capitalia S.p.A .....	Capitalia S.p.A.
20072122 .....	Explorer Pipeline Company .....	Petroleos de Venezuela S.A .....	Petroleos de Venezuela S.A.
20072129 .....	Abu Dhabi National Energy Company PJSC.	Pioneer Natural Resources Company	Pioneer Natural Resources Canada Inc.
20072145 .....	Great Hill Equity Partners III, L.P .....	Mark Towfiq and Carol Nakahara .....	InteleNet Communications, Inc.
20072152 .....	Eugene M. Isenberg .....	Nabors Industries Ltd .....	Nabors Industries Ltd.
20072153 .....	Energy Transfer Partners, L.P .....	MSCP IV CRDI, LLC .....	Canyon Gas Resources, LLC
20072155 .....	Copano Energy, L.L.C .....	MSCP IV CRDI, LLC .....	Cantera Natural Gas, LLC
<b>Transactions Granted Early Termination—09/25/2007</b>			
20072101 .....	Infineon Technologies AG .....	LSI Corporation .....	LSI Corporation
20072109 .....	Audax Private Equity Fund II, L.P .....	Bill D. Brady, as Trustee of the Bill D. Brady Trust.	Brady Holdings, LLC
20072136 .....	S-Process Equipment International S.a.r.l.	Schenck Process SA .....	Schenck Process Holding GmbH
20072156 .....	AEGON N.V .....	Merrill Lynch & Co., Inc .....	Merrill Lynch Life Insurance Company, ML Life Insurance Company of New York
20072160 .....	FleetCor Technologies, Inc .....	Chevron Corporation .....	Chevron U.S.A. Inc.
20072163 .....	J.P. Morgan Chase & Co .....	Sud Chemie AG .....	Sud Chemie AG
20072165 .....	NTR plc .....	Edgewater Growth Capital Partners, LP.	Recycled Holdings Corporation
20072167 .....	Babcock & Brown Limited .....	Bill Sjolander .....	CMC Industries, Inc., CMC Railroad, Inc.
20072168 .....	Lydian Capital Partners LP .....	Trilogy Investors, LLC .....	Trilogy Investors, LLC
20072171 .....	Management Consulting Group PLC	Kurt Salmon Associates, Inc .....	Kurt Salmon Associates, Inc.
20072185 .....	Thermo Fisher Scientific Inc .....	Priority Air Holdings Corp .....	Priority Air Holdings Corp.
<b>Transactions Granted Early Termination—09/26/2007</b>			
20071496 .....	Mylan Laboratories Inc .....	E. Merck oHG .....	EMD, Inc., Merck dura GmbH, Merck Genericos S.L., Merck Generics Belgium B.V.B.A., Merck Generics Group B.V.
20072098 .....	RF Micro Devices, Inc .....	Sirenza Microdevices, Inc .....	Sirenza Microdevices, Inc.
20072166 .....	Knoll, Inc .....	Mr. John Edelman .....	Teddy & Arthur Edelman, Limited
20072172 .....	Industrial Growth Partners III, L.P .....	Russell W. and Pamela C. Lane .....	Atlas Material Testing Technology, LLC
20072174 .....	New Mountain Lake Holdings, LLC ..	U.S. Express Enterprises, Inc .....	U.S. Xpress Enterprises, Inc.
20072188 .....	Gildan Activewear Inc .....	V.I. Prewett & Son, Inc. ....	V.I. Prewett & Son, Inc.
<b>Transactions Granted Early Termination—09/27/2007</b>			
20070861 .....	FirstGroup plc .....	Laidlaw International, Inc .....	Laidlaw International, Inc.
20071415 .....	Maruha Group Inc .....	Nichiro Corporation .....	Nichiro Corporation
<b>Transactions Granted Early Termination—09/28/2007</b>			
20072179 .....	BB&T Corporation .....	Collateral Holdings, Ltd .....	Collateral Management, LLC, Collateral Real Estate Capital, LLC
20072184 .....	Carlyle Europe Partners III, L.P .....	Sociedad General de Aguas de Barcelona, S.A. ("Abgar").	APPLUS Servicios Technologicos, S.L.
20072186 .....	Iconix Brand Group, Inc .....	Official Pillowtex, LLC .....	Official Pillowtex, LLC
20072187 .....	Yahoo!, Inc .....	Zimbra, Inc .....	Zimbra, Inc.
20072190 .....	American Capital Strategies, Ltd .....	Wells Fargo & Company .....	Imperial Supplies LLC
20072195 .....	Warburg Pincus Private Equity IX, L.P.	Integra Telecom, Inc. ....	Integra Telecom, Inc
20072198 .....	Pfingsten Executive QP Fund III, L.P	Tropitone Furniture Co., Inc .....	Tropitone Furniture Co., Inc.
20072201 .....	ABRY Partners V, L.P .....	EHR Holdings, LLC .....	Executive Health Resources, Inc.
20072204 .....	GSCP Sigma (Lux) S.a.r.l .....	Sajjan Kumar Agarwal .....	Gampak Products Corporation, Roemed Holdings, Inc., Semco Electric Private Limited, Sigma Electric Manufacturing Corporation, Ultratech Metals (India) Private Limited
20072205 .....	SECOM Co., LTD .....	Gordon Crane .....	Apple & Eve, LLC
20072208 .....	SECOM Co., LTD .....	Weston Presidio Capital III, LP .....	Apple & Eve, LLC
20072212 .....	Francois Pinault .....	United Retail Group, Inc. ....	United Retail Group, Inc

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H-303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 07-4969 Filed 10-9-07; 8:45 am]

**BILLING CODE 6750-01-M**

**FEDERAL TRADE COMMISSION**

[File No. 071 0164]

**Mylan Laboratories and E. Merck oHG; Analysis of Agreement Containing Consent Orders to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 27, 2007.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Mylan/Merck, File No. 071 0164,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov). The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Kari A. Wallace (202) 326-3085, Bureau of Competition, Room NJ-5108, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2007), on the World Wide Web, at <http://www.ftc.gov/os/2007/09/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

**Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Mylan Laboratories (“Mylan”) and E. Merck oHG (“Merck”) which is designed to remedy the anticompetitive effects of the acquisition of certain assets of Merck by Mylan. Under the terms of the proposed Consent Agreement, the companies would be required to assign and divest the Merck rights and assets necessary to manufacture and market generic: (1) Acebutolol hydrochloride capsules; (2) flecainide acetate tablets; (3) guanfacine hydrochloride tablets; (4) nicardipine hydrochloride capsules; and (5) sotalol hydrochloride AF tablets to Amneal Pharmaceuticals LLC (“Amneal”).

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (“Order”).

Pursuant to an Agreement and Plan of Merger executed on May 12 and 13, 2007, Mylan proposes to acquire Merck's generic subsidiary (“Merck Generics”) and all subsidiaries held directly or indirectly by Merck Generics, by acquiring 100 percent of the issued shares of those subsidiaries for approximately \$6.6 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. markets for the manufacture and sale of the following generic pharmaceutical products: (1) Acebutolol hydrochloride capsules; (2) flecainide acetate tablets; (3) guanfacine hydrochloride tablets; (4) nicardipine hydrochloride capsules; and (5) sotalol hydrochloride AF tablets (the “Products”). The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

Mylan is a leading developer, manufacturer, marketer, and distributor of generic pharmaceutical drugs. Headquartered in Pennsylvania, Mylan

sells generic pharmaceuticals in the United States and has manufacturing facilities throughout the country. Merck is a German pharmaceutical company that develops and manufactures pharmaceutical products for sale in the United States. Merck sells generic pharmaceutical products directly to customers in the United States through its subsidiary Genpharm L.P., as well as indirectly through distribution agreements with other generic companies, including Par Pharmaceutical Companies, Inc. ("Par").

### The Products and Structure of the Markets

The proposed acquisition of certain assets of Merck by Mylan would strengthen Mylan's worldwide position in generic pharmaceuticals and provide Mylan with a stronger pipeline of generic products. The companies overlap in a number of generic pharmaceutical markets, and if consummated, the transaction likely would lead to anticompetitive effects in five of these markets.

The transaction would reduce the number of competing generic suppliers in the overlap markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Because there are multiple generic equivalents for each of the products at issue here, the branded versions no longer significantly constrain the generics' pricing.

In the market for generic acebutolol capsules, Mylan and Merck are the only companies manufacturing and selling products in the United States. For the four other generic products, Mylan and Merck currently are two of a small number of suppliers offering the product. In each of these markets, there are a limited number of competitors.

Generic acebutolol hydrochloride is a beta blocker used to treat hypertension. Mylan and Merck/Par are the only suppliers of generic acebutolol capsules in the United States, with respective market shares of approximately 59 and 41 percent. Therefore, the proposed transaction would give Mylan a monopoly in this market.

Generic flecainide acetate is an anti-arrhythmia drug used to treat heart problems. Flecainide is produced and sold by five companies in the United States: Mylan, Merck/Par, Roxane Laboratories Inc. ("Roxane"), Barr Pharmaceuticals Inc., and Ranbaxy Pharmaceuticals Inc. Mylan is the market leader with nearly 57 percent share, followed by Merck/Par with 21 percent, and Roxane with 19 percent.

After Mylan's acquisition of Merck Generics, Mylan's market share would increase to approximately 78 percent and the number of suppliers of generic flecainide would decrease from five to four.

Guanfacine hydrochloride, the generic version of the branded drug Tenex, is an alpha blocker used to treat hypertension that comes in both 1 mg and 2 mg strengths. Mylan is the market leader with nearly 53 percent share. Watson Pharmaceuticals Inc. ("Watson"), Merck/Par, Actavis Group hf. ("Actavis"), Major Pharmaceuticals Inc. and Qualitest Pharmaceuticals Inc. also manufacture and sell generic guanfacine tablets in the United States, although not all six suppliers are capable of supplying all formulations. For instance, Mylan, Merck/Par, Watson and Actavis, are the only suppliers of the 2 mg formulation of guanfacine. Because many customers prefer to purchase the 1 mg and 2 mg formulations of the product from one supplier, the competitive significance of the other four suppliers who do not sell these formulations is limited.

Nicardipine hydrochloride is a calcium channel blocker used to treat hypertension. Mylan, Merck, and Teva Pharmaceutical Industries Ltd. ("Teva") are the only manufacturers of generic nicardipine capsules in the United States, with respective market shares of 54 percent, 32 percent and 14 percent. The proposed transaction would thus result in an increase in Mylan's market share to approximately 86 percent and reduce the number of suppliers from three to two.

Generic sotalol AF is a beta blocker used to treat hypertension. The market for sotalol AF is led by Apotex Inc. ("Apotex"). Merck and Mylan are the only other significant competitors to Apotex in the generic sotalol AF tablet market. Merck launched its sotalol AF product in late 2006, followed by Mylan in the spring of 2007. Therefore, the proposed transaction would reduce the number of suppliers from three to two.

### Entry

Entry into the markets for the manufacture and sale of the Products would not be timely, likely or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry would not take place in a timely manner because the combination of generic drug development times and FDA drug approval requirements takes at least two years. Entry would not be likely because the relevant markets are relatively small and in decline, so the limited sales opportunities available to a new entrant

are likely insufficient to warrant the time and investment necessary to enter.

### Effects

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic acebutolol hydrochloride capsules, flecainide acetate tablets, guanfacine hydrochloride tablets, nicardipine hydrochloride capsules, and sotalol hydrochloride AF tablets. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. Here, the evidence shows that, given the small number of suppliers, the prices of the generic pharmaceutical products at issue decrease with the entry of each additional competitor. Evidence gathered during our investigation indicates that anticompetitive effects—whether unilateral or coordinated—are likely to result from the proposed transaction due to a decrease in the number of independent competitors in the markets at issue.

The acquisition of Merck by Mylan would create a monopoly in the market for generic acebutolol hydrochloride tablets. The evidence indicates that the presence of more than one competitor allows customers to negotiate lower prices and that the reduction in the number of competitors in this market would allow the merged entity to unilaterally exercise market power with a resulting increase in prices. In the markets for generic flecainide acetate tablets, generic nicardipine hydrochloride capsules, and generic sotalol AF tablets, the proposed acquisition would leave only two significant current competitors: the combined firm and one other company. The evidence indicates that the presence of three or more independent competitors in these markets allows customers to negotiate lower prices, and that a reduction in the number of competitors in these markets would allow the merged entity and other market participants to raise prices. Likewise, in the generic guanfacine hydrochloride tablet market, the reduction in the number of competitors also would likely lead to higher prices.

The competitive concerns can be characterized as both unilateral and coordinated in nature. The homogenous nature of the products involved, the minimal incentives to deviate, and the relatively predictable prospects of gaining new business all indicate that the firms in the market will find it profitable to coordinate their pricing. The impact that a reduction in the

number of firms would have on pricing can also be explained in terms of unilateral effects, as the likelihood that the merging parties would be the first and second choices in a significant number of bidding situations is enhanced where the number of firms participating in the market decreases substantially.

#### The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product markets. Pursuant to the Consent Agreement, Mylan and Merck are required to divest certain rights and assets related to the Products to a Commission-approved acquirer no later than ten (10) days after the acquisition. Specifically, the proposed Consent Agreement requires that Merck divest its assets in the Products to Amneal.

The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating a possible purchaser of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Amneal, a small but growing generic manufacturer, is particularly well-positioned to manufacture and market its acquired products and compete effectively in those markets. Amneal develops, manufactures, sells, and distributes generic pharmaceuticals within the United States. Moreover, Amneal will not present competitive problems in any of the markets in which it will acquire a divested asset because it currently does not compete in those markets. With its resources, capabilities, good reputation, and experience marketing generic products, Amneal is well-positioned to replicate the competition that would be lost with the proposed acquisition.

If the Commission determines that Amneal is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures to Amneal is not acceptable, the parties must unwind the sale and divest the assets within six (6) months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six (6) months, the Commission may appoint a trustee to divest the Products.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Mylan and Merck to provide transitional services to enable the Commission-approved acquirer to

obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Merck.

The Commission has appointed R. Owen Richards of Quantic Regulatory Services, LLC ("Quantic") to oversee the asset transfer and to ensure Mylan and Merck's compliance with all of the provisions of the proposed Consent Agreement. Mr. Richards is President of Quantic and has several years of experience in the pharmaceutical industry. He is a highly-qualified expert on FDA regulatory matters and currently advises Quantic clients on achieving satisfactory regulatory compliance and interfacing with the FDA. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Mylan and Merck to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. E7-19892 Filed 10-9-07; 8:45 am]  
[BILLING CODE 6750-01-S]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30-Day-08-07AY]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

Long-Term Efficacy of a Program to Prevent Beryllium Disease—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

Beryllium is a lightweight metal with many applications. Exposed workers may be found in the primary production, nuclear power and weapons, aerospace, scrap metal reclamation, specialty ceramics, and electronics industries, among others. The size of the USA workforce at risk of chronic beryllium disease (CBD), from either current or past work-related exposure to the metal, may be as high as one million. Demand for beryllium is growing worldwide, which means that increasing numbers of workers are likely to be exposed.

Exposure to beryllium can lead to sensitization and cause an immunologic granulomatous lung disease. Sensitization is a cell-mediated allergic-type response that may be detected in the peripheral blood with the beryllium lymphocyte proliferation test (BeLPT), which is used by the industry as a surveillance tool. Workers found to be sensitized may be clinically evaluated for CBD with tests including bronchoalveolar lavage and transbronchial biopsy. Cross-sectional studies in various beryllium workplace populations have identified sensitization in the range of less than 1% to 14% of workers. The proportion of sensitized workers who have beryllium disease at initial clinical evaluation has varied from 10 to 100% in different workplaces. Sensitized workers not initially diagnosed with CBD are often diagnosed with the disease upon follow-up, but whether all sensitized workers will eventually develop beryllium disease is unknown. Industry screening programs have enabled the identification of CBD in persons without apparent symptoms, often early in disease progression (often referred to as "subclinical disease"). Progression from sensitization to subclinical disease to clinical impairment, while difficult to predict for any one individual, is not uncommon.

Currently, there are no preventive programs that have been demonstrated to have long-term effectiveness in preventing beryllium sensitization and CBD among beryllium-exposed workers. In the United States, recent short-term evidence (i.e., average work tenure 16 months, maximum four years) at one facility suggests that the comprehensive

preventive program that was implemented by company management beginning in 2000 has successfully reduced the incidence of beryllium sensitization, as defined by the occurrence of confirmed abnormal BeLPTs. However, the follow-up has thus far been limited to current workers, the duration has been too short to document a reduced incidence of CBD, and it is possible that sensitization has been delayed, rather than prevented. Evaluation of this program's effectiveness would therefore be more complete by including individuals who have left employment and documenting

whether: (1) The program was effective at two other facilities at which it was implemented, (2) the program prevented beryllium sensitization over a longer period of time (i.e., up to eight years); and (3) the program prevented CBD, which generally takes longer to develop.

*Study Design*

This proposed study is designed to evaluate the effectiveness of a comprehensive preventive program at three beryllium plants. Approximately 579 eligible workers for this survey include those hired between implementation of a comprehensive

program (2000) and December 31, 2008, including any already known to be sensitized. NIOSH will offer all eligible current and former workers the BeLPT to identify sensitization and administer a work and medical history questionnaire.

There are no costs to former worker respondents except their time to participate in the interview; current workers will participate during work hours and thus compensated by their employer, and former workers will participate during their own time. The total estimated annualized burden hours are 193.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number responses per respondent	Average burden/response (in hours)
Former workers .....	113	1	45/60
Current workers .....	80	1	45/60
Participant Consent and Authorization for Release of Information .....	193	1	15/60

Dated: October 2, 2007.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E7-19878 Filed 10-9-07; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Centers for Disease Control and Prevention (CDC) Grants for Public Health Research Dissertation, Program Announcement (PA) PAR07-231, Panel A**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

*Time and Date:*

7 a.m.-9 p.m., November 14, 2007 (Closed).  
8:30 a.m.-5 p.m., November 15, 2007 (Closed).

*Place:* Crowne Plaza Buckhead, 3377 Peachtree Road NE., Atlanta, GA 30326. Telephone (404) 264-1111.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters to be Discussed:* The meeting will include the review, discussion, and

evaluation of "CDC Grants for Public Health Research Dissertation," PAR07-231, Panel A.

*Contact Person for More Information:* Juliana Cyril, PhD, M.P.H., Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road NE., Mailstop D 72, Atlanta, GA 30333. Telephone (404) 639-4896. 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: October 2, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E7-19880 Filed 10-9-07; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Advisory Council for the Elimination of Tuberculosis (ACET)**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

*Times and Dates:*

8:30 a.m.-5 p.m., November 27, 2007.  
8:30 a.m.-12:30 p.m., November 28, 2007.

*Place:* Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333. Telephone (404) 639-8317.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

*Matters to be Discussed:* Agenda items include issues pertaining to Foreign-Born and Immigration Issues; Legal Border Issues; and National Tuberculosis Training and Education Centers, and other related tuberculosis issues.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Margie Scott-Cseh, Coordinating Center for Infectious Diseases, Small Business Unit, 1600 Clifton Road, NE., M/S E-07, Atlanta, Georgia 30333. Telephone (404) 639-8317.

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: October 2, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. E7-19885 Filed 10-9-07; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

*Time and Date:* 12 p.m.–2 p.m., October 24, 2007.

*Place:* The conference call will originate at the National Center on Birth Defects and Developmental Disabilities (NCBDDD), in Atlanta, Georgia. Please see Supplementary Information for details on accessing the conference call.

*Status:* Open to the public, limited only by the availability of telephone ports.

*Purpose:* The Secretary is authorized by the Public Health Service Act, Section 399G, (42 U.S.C. Section 280f, as added by Pub. L. 105-392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to: (1) Foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

*Matters to be Discussed:* The Task Force will convene via conference call to: (1) Discuss and vote on the Task Force report, "Reducing Alcohol-Exposed Pregnancies," (2) provide an update on approved Task Force document, "Call to Action: Ensuring Research and Essential Services for Persons with FASDs and their Caregivers", and (3) discuss plans for disseminating final Task Force products.

Agenda items are subject to change as priorities dictate.

*Supplementary Information:* This conference call is scheduled to begin on October 24, 2007 at 12 p.m., Eastern Standard Time. To participate in the conference call, please dial 1 (866) 619-1481 and enter conference passcode 4832402. You will then be automatically connected to the call.

*Contact Person for More Information:* Mary Kate Weber, M.P.H., Designated Federal Officer, NBDDE, CDC, 1600 Clifton Road, NE., Mailstop E-86, Atlanta, Georgia 30333. Telephone (404) 498-3926, Fax (404) 498-3550.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: October 2, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. E7-19887 Filed 10-9-07; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****Health Resources and Services Administration (HRSA); CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC announces the following meeting of the aforementioned committee:

*Times and Dates:*

8 a.m.–5 p.m., November 15, 2007.

8 a.m.–12:15 p.m., November 16, 2007.

*Place:* Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland, Telephone (301) 652-2000, Fax (301) 664-7317.

*Status:* Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

*Purpose:* This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

*Matters to be Discussed:* Agenda items include issues pertaining to (1) Implementation of the Ryan White HIV/AIDS Treatment Modernization Act of 2006; (2) HIV and STD Prevention and Treatment in Program Targeted to Native Americans, Alaska Natives, and Native Hawaiians; and the (3) Efforts to Integrate and Promote HIV/STD Prevention and Management Strategies.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Margie Scott-Cseh, Committee Management Specialist, CDC, Strategic Business Unit, 1600 Clifton Road, NE., Mailstop E-07, Atlanta, Georgia 30333. Telephone (404) 639-8317, Fax (404) 639-8910, E-mail [zkr7@cdc.gov](mailto:zkr7@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. E7-19879 Filed 10-9-07; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****National Institute for Occupational Safety and Health (NIOSH), Safety and Occupational Health Study Section**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

*Times and Dates:*

8 a.m.–5 p.m., October 25, 2007.

8 a.m.–5 p.m., October 26, 2007.

*Place:* Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia, 22314. Telephone (703) 684.5900, Fax (703) 684.1403.

*Purpose:* The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

*Matters to be Discussed:* The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Section 10(d) Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Price Connor, PhD, NIOSH Health Scientist, 1600 Clifton Road, NE., Mailstop E-20, Atlanta, Georgia 30333. Telephone (404) 498.2511, Fax (404) 498.2571.

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: October 2, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E7-19884 Filed 10-9-07; 8:45 am]

**BILLING CODE 4163-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Low Income Home Energy Assistance Program (LIHEAP) Household Report.

*OMB No.:* 0970-0060.

*Description:* This statistical report is an annual activity required by statute (42 U.S.C. 8629) and Federal regulations (45 CFR 96.92) for the Low Income Energy Assistance Program (LIHEAP).

Submission of the completed report is one requirement for LIHEAP grantee applying for Federal LIHEAP block grant funds. States, the District of Columbia, and the Commonwealth of Puerto Rico are required to report statistics for the previous Federal fiscal year on the number and income levels of LIHEAP applicants and assisted households, as well as the number of LIHEAP-assisted households with at least one member who is elderly, disabled, or a young child.

The statistical report required States, the District of Columbia, and the Commonwealth of Puerto Rico to report on an unduplicated count of assisted households having at least one member who is elderly, disabled, or a young child, and an unduplicated count of assisted households receiving one or more types of LIHEAP assistance. The Administration deleted on the proposal to add the reporting requirement of "assisted households having at least one elderly person who is homebound" based on comments received in response to the first notice.

Insular areas receiving less than \$200,000 annually in LIHEAP funds and

Indian Tribal Grantees are required to submit data only on the number of households receiving heating, cooling, energy crisis, or weatherization benefits. The information is being collected for the Department's annual LIHEAP report to Congress. The data also provides information about the need for LIHEAP funds. Finally, the data are used in the calculation of LIHEAP performance measures under the Government Performance and Results Act of 1993. The additional data elements will improve the accuracy of measuring LIHEAP targeting performance and LIHEAP cost efficiency.

The form will remain the same as in the past until Fiscal Year 2010. Start-up for the updated format will require significantly higher burden hours per response. Therefore, the Annual Burden

Estimates below reflect an average of the first two years of this renewal period before the burden changes with the third year of this renewal period during the revisions.

*Respondents:* State Governments, Tribal Governments, Insular Areas, the District of Columbia, and the Commonwealth of Puerto Rico.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Assisted Household Report-Long Form .....	52	1	190	9,880
Assisted Household Report-Short Form .....	144	1	1	144
Applicant Household Report .....	52	1	13	676
Estimated Total Annual Burden Estimates .....				10,700

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the

Administration for Children and Families.

Dated: October 2, 2007.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 07-4968 Filed 10-9-07; 8:45 am]

**BILLING CODE 4184-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Administration on Children, Youth and Families; Award Announcement**

**AGENCY:** Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Award announcement.

**CFDA NO.:** 93.616.

**SUMMARY:** The Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB), herein announces the awarding of fifty supplemental awards in the amount of \$5,733,115 to Fiscal Year (FY) 2006 Mentoring of Children of Prisoners (MCP) grantees.

Section 439 of the Social Security Act, as amended by the Child and Family Services Improvement Act of 2006 (Pub. L. 109-288) authorizes the Secretary of Health and Human Services (HHS) to award grants for the purpose of supporting the establishment or expansion and operation of community-based programs to provide one-on-one mentoring relationships between a child of incarcerated parent(s) and a caring, supportive adult mentor under the Mentoring Children of Prisoners Program (MCP).

The program is designed to reach the President's goal of establishing 100,000 mentor/mentee relationships between a

caring adult and a young person whose parent(s) is incarcerated in a correctional facility by the end of FY 2008. This funding is requested for those grantees that have demonstrated the capacity to make quality matches and currently making significant process in reaching their match goal. One-third of the grantees have made over 50% of their three-year match goal within their first year. The fifty supplemental awards are important to helping our grantees reach more youth who are in need of a mentor.

The following agencies are receiving grant funds for a twelve month project period:

Boys II Men Mentoring TN	90CV0235	77,806
YMCA of Greater Louisville, KY	90CV0238	74,250
BBBS of San Diego County	90CV0245	66,330
BBBS of Northeastern Arizona	90CV0247	105,930
BBBS of Ventura County	90CV0248	51,462
BBBS of Harrisonburg	90CV0255	81,175
BBBS of the Heart of GA	90CV0256	34,650
BBBS of Marin and Napa Counties	90CV0258	177,219
Clemson Univ, SC	90CV0259	170,963
Little Dixie Comm CAA, OK	90CV0263	99,000
Serving Children & Adolescents	90CV0264	105,000
BBBS of South Texas	90CV0265	600,930
BBBS of Northern Nevada	90CV0269	125,730
BBBS of Central Ohio	90CV0270	329,701
BBBS Northwest, OR	90CV0275	110,880
BBBS of the Capital Region	90CV0277	125,075
BBBS of Morris, Bergen & Passaic, NJ	90CV0278	97,000
Volunteers of America Western Washington	90CV0279	33,880
Institute for Interactive Inst. MD	90CV0283	105,928
Faith Temple Christian Ctr. FL	90CV0284	86,130
City of Longview, TX	90CV0286	91,080
Committed Partners OR	90CV0287	74,250

Lac Courte Oreilles Bank of Lake Superior	90CV0294	65,846
Youth in Action, Inc.	90CV0296	86,130
BBBS of Florida	90CV0298	449,254
BBBS of Southeastern PA	90CV0300	623,700
BBBS of the Capital Region, PA	90CV0302	71,280
Adams Cty Col for CY, MS	90CV0305	30,414
BBBS of Delaware	90CV0309	76,036
Hour Children, Inc.	90CV0310	74,250
Indio Youth Task Force, CA	90CV0311	105,930
ExodusTrans Comm, Inc. NY	90CV0312	89,100
DeKalb County	90CV0234	132,000
BBBS of Greater Charlotte, NC	90CV0240	40,365
Youth Connections, Inc. GA	90CV0241	164,441
Pittsburgh Ldrshp Fdntr, PA	90CV0239	116,444
BBBS of Siouxland	90CV0243	87,333
BBBS of Eastern Missouri	90CV0244	116,444
BBBS of Central Iowa	90CV0253	29,111
Center for Children, Inc. MD	90CV0254	18,755
Volunteers in Prevention	90CV0260	107,711
Community Drop In Center	90CV0262	16,786
Greenhope Services for Women	90CV0266	70,572
Missoula Cty, MT	90CV0268	29,405
Franklin Williamson Human Services	90CV0272	47,709
BBBS of Bismarck, ND	90CV0274	32,192
Centerforce, CA	90CV0293	32,942
Pima Prevention Partnership, AZ	90CV0304	88,742
New York Youth at Risk	90CV0280	32,492
Boys and Girls Club of Benton County, Inc.	90CV0257	73,362

Dated: September 28, 2007.

**Susan Orr,**

*Associate Commissioner, Administration on Children, Youth and Families.*

[FR Doc. E7-19890 Filed 10-9-07; 8:45 am]

**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Administration for Children, Youth and Families; Award Announcement**

**AGENCY:** Administration on Children, Youth and Families.

**ACTION:** Award announcement, Administration for Children and Families, Department of Health and Human Services.

**CFDA NO.:** 93.616.

**SUMMARY:** The Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB), herein announces the awarding of ten supplemental awards in the amount of \$1,932,300 to fund Fiscal Year (FY) 2007 Runaway and Homeless Youth Training and Technical Assistance cooperative agreements. The average amount per grantee would be \$192,230.

Section 439 of the Social Security Act, as amended by the Child and Family Services Improvement Act of 2006 (Pub. L. 109-288) authorizes the Secretary of Health and Human Services (HHS) to award grants for the purpose of supporting the establishment or expansion and operation of community-based programs to provide one-on-one mentoring relationships between a child of incarcerated parent(s) and a caring, supportive adult mentor under the Mentoring Children of Prisoners Program (MCP). This supplemental funding will be used to access the capacity building expertise of the ten Runaway and Homeless Youth Training and Technical Assistance Providers for the purpose of enhancing the capacity of newly awarded lower scoring community and faith-based MCP grantees. It is expected that the supplementing of the ten RHY Training and Technical Assistance Providers will result in the reduction in program start-up issues and other barriers to high performance.

It is critical that these MCP grantees receive the best possible services as it relates to enhancing their capacity to develop and maintain a quality mentoring program. The following agencies are receiving grant funds for a twelve month project period:

**FOR FURTHER INFORMATION CONTACT:**  
Curtis O. Porter, Acting Associate Commissioner, Family and Youth Services Bureau, ACYF, ACF, DHHS. Portals Building, 1250 Maryland Avenue, SW., Washington, DC 20024; 202-205-8102.

Mid-Atlantic Network of Y&FS, PA .....	90CY2175	202,500
MINK Network of RHY, MO ..	90CY2176	157,500
Southwest Network of YS, TX .....	90CY2177	202,500
Southeastern Network of YFS, AL .....	90CY2178	216,000
Empire State Coalition of YFS .....	90CY2179	177,300
Mountain Plains Network for Youth, ND .....	90CY2180	157,500
New England Network/YFS, MA .....	90CY2181	198,000
Northwest Network of RHYS, WA .....	90CY2182	180,000
Youth Network Council, IL .....	90CY2183	225,000
Western States Youth Svcs, AZ .....	90CY2184	216,000

deviation to supplement the National Runaway Switchboard for the purpose of expanding their services. Congress authorized the establishment of a “national communications system to assist runaway and homeless youth in making contact with their families and service providers” through the Runaway and Homeless Youth Act (RHYA) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Funding for the system was first authorized in fiscal year 1980. (The system currently is authorized through Part C, section 331, of the “Runaway, Homeless, and Missing Children Protection Act,” Pub. L. 108–96.)

The Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB), herein announces an expansion supplement award to the National Runaway Switchboard (NRS) for two initiatives; a comprehensive research project on runaway and at-risk youth and a comprehensive database conversion.

The results of the comprehensive research project will enable NRS to better understand how to communicate with youth and develop strategies to connect with them and them with the NRS. The comprehensive database conversion will enhance the Switchboard’s capability to download and manage information. This project will provide the NRS with the internal controls necessary to query and analyze data collected in their crisis logs. It is anticipated that the enhanced internal controls will result in a significant improvement in the way needs of runaway, homeless and other youth in at-risk situations are met. This expansion supplement is for a nine month project period for the amount of \$162,637.

**FOR FURTHER INFORMATION CONTACT:**

Curtis O. Porter, Acting Associate Commissioner, Family and Youth Services Bureau, ACYF, ACF, DHHS. Portals Building, 1250 Maryland Avenue, SW., Washington, DC 20024; 202–205–8102.

Dated: September 28, 2007.

**Susan Orr,**

*Associate Commissioner, Administration on Children, Youth and Families.*

[FR Doc. E7–19881 Filed 10–9–07; 8:45 am]

**BILLING CODE 4184–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Award Announcement; Administration on Children, Youth and Families**

**AGENCY:** Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Award announcement.

**CFDA NO.:** 93.550, 93.623, 93.557.

**SUMMARY:** The Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB) announces the approval of a

**FOR FURTHER INFORMATION CONTACT:**

Curtis O. Porter, Acting Associate Commissioner, Family and Youth Services Bureau, ACYF, ACF, DHHS. Portals Building, 1250 Maryland Avenue, SW., Washington, DC 20024; 202–205–8102.

Dated: September 28, 2007.

**Susan Orr,**

*Associate Commissioner, Administration on Children, Youth and Families.*

[FR Doc. E7–19886 Filed 10–9–07; 8:45 am]

**BILLING CODE 4184–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2007N–0246]

**Menley & James Laboratories, Inc. et al.; Withdrawal of Approval of Six New Drug Applications**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of six new drug applications (NDAs) from multiple holders of these applications. The basis for the withdrawals is that the holders of the applications have repeatedly failed to file required annual reports for the applications.

**DATES:** Effective October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the **Federal Register** of June 28, 2007 (72 FR 35498), FDA published a notice offering an opportunity for a hearing (NOOH) on a proposal to withdraw approval of six NDAs because the firms had failed to submit the required annual reports for these applications. The holders of these applications did not respond to the NOOH. Failure to file a written notice of participation and request for hearing as required by part 314 (21 CFR 314) in § 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the six applications listed in the table of this document.

Application No.	Drug	Applicant
NDA 6–410	Benzedrex (propylhexadrine) Nasal Spray	Menley & James Laboratories, Inc., Commonwealth Corporate Center, 100 Tournament Dr., Horsham, PA 19044

Application No.	Drug	Applicant
NDA 7-518	Synthetic Vitamin A	Pfizer Laboratories, Division of Pfizer, Inc., 235 East 42nd St., New York, NY 10017
NDA 8-837	Isoniazid Tablets	Barnes Hind, 895 Kifer Rd., Sunnyvale, CA 94806
NDA 8-851	NDK Fluoride Dentifrice (sodium monofluorophosphate)	NDK Co., c/o J.W. Emmer/Kenneth Emmer, 215 Genevieve Dr., Lafayette, LA 70503
NDA 9-395	Paskalium (potassium aminosaliclylate)	Glenwood, 111 Cedar Lane, Englewood, NJ 07631
NDA 19-518	Extra Strength Aim (sodium monofluorophosphate)	Chesebrough-Ponds USA Co., 33 Benedict Pl., P.O. Box 6000, Greenwich, CT 06836-6000

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated by the Commissioner, finds that the holders of the applications listed in this document have repeatedly failed to submit reports required by § 314.81. In addition, under § 314.200, we find that the holders of the applications have waived any contentions concerning the legal status of the drug products. Therefore, under these findings, approval of the applications listed in this document, and all amendments and supplements thereto, is hereby withdrawn, effective October 10, 2007.

Dated: September 24, 2007.

**Douglas C. Throckmorton,**

*Deputy Director, Center for Drug Evaluation and Research.*

[FR Doc. E7-19865 Filed 10-9-07; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2007N-0357]

#### Medical Device User Fee and Modernization Act; Notice to Public of Web Location of 2008 Proposed Guidance Development; Establishment of a Public Docket

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the Web location where it will post a list of guidance documents the Center for Devices and Radiological Health (CDRH) is considering for development. In addition, FDA is establishing a docket where stakeholders may provide comments and/or draft language for those topics as well as suggestions for new or different guidances.

**DATES:** Submit written or electronic comments at any time.

**ADDRESSES:** Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Wolf, Center for Devices and Radiological Health (HFZ-215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240-276-2350.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

During negotiations over the reauthorization of the Medical Device User Fee and Modernization Act (MDUFMA), FDA agreed, in return for additional funding from industry, to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. These commitments include annually posting a list of guidance documents that FDA's Center for Devices and Radiological Health (CDRH) is considering for development and providing stakeholders an opportunity to provide comments and/or draft language for those topics, or suggestions for new or different guidances. This notice announces the Web location of the list of guidances CDRH is intending to work on over the next fiscal year. We note that the agency is not required to issue every guidance on the list, nor is it precluded from issuing guidance documents that are not on the list. The list includes topics that currently have no guidance associated with them, topics where updated guidance may be helpful, and topics for which CDRH has already issued Level 1 drafts that may be finalized following review of public

comments. We will consider stakeholder comments as we prioritize our guidance efforts.

We also note that CDRH's experience over the years has shown that there are many reasons CDRH staff cannot complete the entire annual agenda of guidances it undertakes. Staff are frequently diverted from guidance development to other activities, including review of premarket submissions or postmarket problems. In addition, the Center is required each year to issue a number of guidances it cannot know about in advance. These may involve newly identified public health issues as well as special control guidance documents that are necessary for the classification of *de novo* devices. It will be helpful, therefore, to receive comments that indicate the relative priority of different guidance topics to interested stakeholders.

The Center expects that the recent initiatives it has taken to streamline and track guidance development will improve its capacity to issue more guidance documents. The posting and the establishment of a docket announced through this notice is one of the ways CDRH hopes to enhance the process. Through feedback from stakeholders, including draft language for guidance documents, CDRH expects to be able to better prioritize and more efficiently draft guidances that will be useful to industry and other stakeholders. FDA intends to update the list each year.

FDA invites interested persons to submit comments on any or all of the guidance documents on the list. FDA has established a specific Docket (see docket number found in brackets in the heading of this document) where comments about the list, draft language for guidance documents on those topics, and suggestions for new or different guidances may be submitted. FDA hopes this docket will become an important tool for receiving information from interested parties and for sharing this information with the public.

Similar information about planned guidance development is included in the annual agency-wide notice issued by FDA under its good guidance practices (21 CFR 10.115(f)(5)). This CDRH list, however, will be focused exclusively on device-related guidances and will be made available on FDA's Web site prior to the beginning of each fiscal year from 2008 to 2012.

## II. Request for 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. Comments submitted to this docket may include draft guidance documents that stakeholders have prepared for FDA's consideration.

To access the list of the guidance documents CDRH is considering for development in 2008, visit the FDA Web Site at <http://www.fda.gov/cdrh/mdufma/guidance/agenda/fy08.html>.

Dated: October 2, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-19864 Filed 10-9-07; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Notice of meeting of the Advisory Committee on Organ Transplantation

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of meeting of the Advisory Committee on Organ Transplantation.

**SUMMARY:** Pursuant to Public Law 92-463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the thirteenth meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on November 15, 2007, and from 9 a.m. to 3 p.m. on November 16, 2007, at the Crowne Plaza Hotel Washington,

DC—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

ACOT will hear presentations on xenotransplantation; pediatric transplantation; transplantation economics; a description of two National Institutes of Health long-term living donor follow up studies; and Organ Procurement and Transplantation Network Long-Term Follow Up. The ACOT work groups also will update the full Committee on their deliberations on transplant tourism, informed consent, sources of funding for additional data collection, and tissue recovery and transplantation certification/accreditation.

The draft meeting agenda will be available on November 1 on the Department's donation Web site at <http://www.organdonor.gov/acot.html>.

A registration form will be available on October 15 on the Department's donation Web site at <http://www.organdonor.gov/acot.html>. The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234-1701. Individuals without access to the Internet who wish to register may call Sowjanya Kotakonda with PSA at (703) 234-1737. Registration can also be

completed electronically at <http://www.psava.com/dot/acot2007/>.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Secretary, Remy Aronoff, in advance of the meeting. Mr. Aronoff may be reached by telephone at 301-443-3264, e-mail: [Remy.Aronoff@hrsa.hhs.gov](mailto:Remy.Aronoff@hrsa.hhs.gov) or in writing at the address provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 12C-06, Rockville, Maryland 20857; telephone number 301-443-7577.

After the presentations and ACOT discussions, members of the public will have an opportunity to provide comments. Because of the Committee's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: October 2, 2007.

**Elizabeth M. Duke,**  
*Administrator.*

[FR Doc. E7-19969 Filed 10-9-07; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; 67 FR 46519, July 15, 2002; 68 FR 787-793, January 7, 2003; 68 FR 8515-8517, February 21, 2003; 68 FR 64357-64358, November 13, 2003; 69 FR 56433-56445, September 21, 2004; as last amended at 70 FR 19962-19963, April 15, 2005). This Order of Succession supersedes the Order of Succession for the Administrator, HRSA, published at FR 70 19962-19963, April 15, 2005.

This notice updates changes to HRSA's hierarchy affecting the Office of the Administrator; Deputy Administrator; Senior Advisor to the Administrator, Chief Financial Officer; Bureau of Primary Health Care; Office of

Management; Bureau of Health Professions; HIV/AIDS Bureau; Maternal and Child Health Bureau; Bureau of Clinician Recruitment and Service; Healthcare Systems Bureau; and Office of Performance Review.

This notice is to reflect the Order of Succession for the HRSA.

**Section R-30, Order of Succession**

During the absence or disability of the Administrator or in the event of a vacancy in the office, the first official listed below who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession. The order of succession will be as such:

1. Deputy Administrator;
2. Senior Advisor to the Administrator;
3. Chief Financial Officer;
4. Associate Administrator, Bureau of Primary Health Care;
5. Associate Administrator, Office of Management;
6. Associate Administrator, Bureau of Health Professions;
7. Associate Administrator, HIV/AIDS Bureau;
8. Associate Administrator, Maternal and Child Health Bureau;
9. Associate Administrator, Bureau of Clinician Recruitment and Service;
10. Associate Administrator, Healthcare Systems Bureau; and
11. Associate Administrator, Office of Performance Review.

**Section R-40, Delegation of Authority**

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect

immediately prior to the effective date of this action will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this action.

*This document is effective upon date of signature.*

Dated: October 1, 2007.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. E7-19966 Filed 10-9-07; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Submission for OMB Review; Comment Request; Graduate Student Training Program Applications**

*Summary:* Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Graduate Partnerships Program/OIR/OD/, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Monday, June 25, 2007/Vol. 72, No. 121/Pages 34692-34693 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been

extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* Graduate Student Training Programs Application. *Type of Information Collection Request:* Revision. *Need and Use of Information Collection:* The information gathered in the Graduate Student Training Programs application will enable the identification and evaluation of graduate students interested in performing their dissertation research in the NIH Intramural Research Program laboratories (NIH-IRP). The GSTP application models graduate university applications by containing the sections that will aid in the NIH Admission Committee's evaluation of an applicant: Contact information, citizenship, education history and transcripts, standardized examination scores, research interests, personal statement research proposal, references and letters of recommendation, and partnership selection. Ethnicity and gender are additional optional information used to evaluate the GPP recruiting abilities and compliance with federal regulations. Feedback questions forwarded to interviewed applicants will assist in modifying interview day schedules and identification of factors used when deciding to accept or decline the admission offer. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Students pursuing an advanced degree and wish to perform dissertation research in the NIH Intramural Research Program laboratories. The annual reporting burden is displayed in the following table:

A.12-1 ESTIMATES OF ANNUAL BURDEN HOUR

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Graduate Student Applicants On-Line 10 .....	100	1	0.50	50
Post-baccalaureate Applicants On-Line .....	500	1	0.50	250
Collection & Submission of Hardcopy Documents .....	600	1	0.50	300
Recommendations (600 x 3) .....	1800	1	0.25	450
Feedback Questions .....	200	1	0.25	50
<b>Totals .....</b>	<b>3200</b>	<b>.....</b>	<b>.....</b>	<b>1100</b>

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the

information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding

the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Patricia Wagner, Director of Admissions & Registrar, Graduate Partnerships Program, National Institutes of Health, 2 Center Drive: Building 2/2E06, Bethesda, Maryland 20892-0234, or call 301-594-9603 or E-mail your request, including your address to: [wagnerpa@od.nih.gov](mailto:wagnerpa@od.nih.gov).

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 27, 2007.

**Michael M. Gottesman,**

*Deputy Director of Intramural Research,  
National Institutes of Health.*

[FR Doc. E7-19975 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Sciences.

*Date:* October 29, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Jeanette M. Hosseini, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594-9096, [jeanetteh@mail.nih.gov](mailto:jeanetteh@mail.nih.gov).

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4985 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Pathway to Independence Awards (K99's).

*Date:* October 29, 2007.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* William J Johnson, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892-7924, 301-435-0725, [johnsonw@nhlbi.nih.gov](mailto:johnsonw@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Disease Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research; National Institutes of Health, HHS)

Dated: October 2, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4979 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended.

The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

*Date:* November 8-9, 2007.

*Time:* November 8, 2007, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

*Time:* November 9, 2007, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Keith McKenney, PhD, Scientific Review Administrator, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301-594-4280, [mckenneyk@mail.nih.gov](mailto:mckenneyk@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: October 2, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4977 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel, Conflict Review.

*Date:* November 9, 2007.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Rockville, (Double Tree Name Changed) 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Keith McKenney, PhD, Scientific Review Administrator, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301-594-4280, [mckenneyk@mail.nih.gov](mailto:mckenneyk@mail.nih.gov).

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel, MAP Review Teleconference.

*Date:* November 15, 2007.

*Time:* 11:30 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ken D. Nakamura, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301-402-0838, [nakamurk@mail.nih.gov](mailto:nakamurk@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4983 Filed 10-9-07; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4)

and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, P30 Supplement.

*Date:* November 7, 2007.

*Time:* 10:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892-9608, 301/443-7216, [hhaigler@nih.gov](mailto:hhaigler@nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Mechanisms of HIV Neuropathogenesis: Emerging Domestic & Global Issues.

*Date:* November 9, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6142, MSC 9606, Bethesda, MD 20892, 301-443-1513, [psherida@mail.nih.gov](mailto:psherida@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 2, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4978 Filed 10-9-07; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Mentored Career Development Application.

*Date:* October 31, 2007.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Kan Ma, PhD, Scientific Review Administrator.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 2, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4980 Filed 10-9-07; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Continuing Clinical Trials Review.

*Date:* October 18, 2007.

*Time:* 3:30 p.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Harbor Magic Pier 5 Hotel, 711 Eastern Ave., Baltimore, MD 21202.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20852, (301) 435-6033, [rajarams@mail.nih.gov](mailto:rajarams@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NETT REVIEW.

*Date:* October 19, 2007.

*Time:* 7:30 a.m. to 9:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Harbor Magic—Pier 5 Hotel, 711 Eastern Ave., Baltimore, MD 21202.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20852, (301) 435-6033, [rajarams@mail.nih.gov](mailto:rajarams@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Epilepsy Clinical Trials.

*Date:* October 22, 2007.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* William C. Benzing, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3402, Msc 9529, Bethesda, MD 20852, (301) 496-0660, [benzingw@mail.nih.gov](mailto:benzingw@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Autism Review.

*Date:* October 29, 2007.

*Time:* 3 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208,

Msc 9529, Bethesda, MD 20852, (301) 435-6033, [rajarams@mail.nih.gov](mailto:rajarams@mail.nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, K 99 Review.

*Date:* November 19, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Mandarin Oriental Hotel, 1330 Maryland Ave., SW., Washington, DC 20024.

*Contact Person:* JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892-9529, (301) 496-5324, [mconnef@mail.nih.gov](mailto:mconnef@mail.nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NINDS Institutional Training.

*Date:* November 27-28, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., STE. 3208, Bethesda, MD 20892-9529, (301) 496-9223, [saavedrr@ninds.nih.gov](mailto:saavedrr@ninds.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 2, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4981 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of K05 applications.

*Date:* November 12, 2007.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301-443-0800, [bbuzas@mail.nih.gov](mailto:bbuzas@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4982 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Function of Toll-Like Receptors Throughout Gestation.

*Date:* October 29, 2007.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435-6889, [bhatnagg@mail.nih.gov](mailto:bhatnagg@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209; Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4984 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Clinical Trial Planning (R34) Grants.

*Date:* October 31, 2007.

*Time:* 2 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 1202, Bethesda, MD 20817. (Telephone Conference Call).

*Contact Person:* Mary J. Homer, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496-7042, [mjhomer@niaid.nih.gov](mailto:mjhomer@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Officer of Federal Advisory Committee Policy.*

[FR Doc. 07-4986 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of Influenza Vaccine P01.

*Date:* November 5, 2007.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

*Contact Person:* Clayton C. Huntley, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, (301) 451-2570, [ch405t@nih.gov](mailto:ch405t@nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Integrated Preclinical/Clinical AIDS Vaccine Development (IPCAVD) Program (U19).

*Date:* November 16, 2007.

*Time:* 8 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, Double Tree Name Changed, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Clayton C. Huntley, PhD., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda,

MD 20892-7616, (301) 451-2570, [chuntley@niaid.nih.gov](mailto:chuntley@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4987 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of one P01 Regulation of T Cell Immunity.

*Date:* October 22, 2007.

*Time:* 12:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20817. (Telephone Conference Call).

*Contact Person:* Katrin Eichelberg, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-496-0818, [keichelberg@niaid.nih.gov](mailto:keichelberg@niaid.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Novel HIV Therapies: Integrated Preclinical/Clinical Program (IPCP).

*Date:* October 29-30, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, Double Tree Name Changed, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Barney Duane Price, PhD., Scientific Review Administrator, Scientific Review Program, DHS/NIH/NIAID/DEA, Room 3139, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-2592, [pricebd@niaid.nih.gov](mailto:pricebd@niaid.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4988 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, B Cell Immunology for Protective HIV-1 Vaccine.

*Date:* October 29-30, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Kenneth E. Santora, PhD., Scientific Review Administrator, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-451-2605, [ks216i@nih.gov](mailto:ks216i@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases, National Institutes of Health, HHS).

Dated: October 3, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-4989 Filed 10-9-07; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Host Response to Bacterial Pathogens.

*Date:* October 14, 2007.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892. 301-402-4454, [kostrikr@csr.nih.gov](mailto:kostrikr@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Circadian Rhythms and Sexual Behavior.

*Date:* October 19, 2007.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892. 301-435-1257, [baizerl@csr.nih.gov](mailto:baizerl@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Delivery Systems and Nanotechnology.

*Date:* October 22-24, 2007.

*Time:* 6 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892. 301-435-2810, [zullost@csr.nih.gov](mailto:zullost@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, GGG Special Topics.

*Date:* October 24, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435-0601, [marinomi@csr.nih.gov](mailto:marinomi@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, BST Member Conflict.

*Date:* October 26-27, 2007.

*Time:* 8 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301-435-1245, [chackoge@csr.nih.gov](mailto:chackoge@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR Environmental Toxicology Monitoring and Remediation.

*Date:* October 29-31, 2007.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301-435-2810, [zullost@csr.nih.gov](mailto:zullost@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Collaborations with NCBCs.

Date: October 29–30, 2007.

Time: 8 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, 301-435-2211, [KlosekM@csr.nih.gov](mailto:KlosekM@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 2, 2007.

**Jennifer Spaeth,**

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4991 Filed 10–9–07; 8:45 am]

BILLING CODE 4140–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Amended Notice Meeting**

Notice is hereby given of a change in the meeting of the Pathobiology of Kidney Disease Study Section, October 11, 2007, 8 a.m. to October 12, 2007, 5 p.m., Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036 which was published in the **Federal Register** on September 21, 2007, 72 FR 54051–54054.

The meeting will be held one day only—October 11, 2007, 8 a.m. to 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 2, 2007.

**Jennifer Spaeth,**

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4993 Filed 10–9–07; 8:45 am]

BILLING CODE 4140–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases, Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 6, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, [pamstad@niaid.nih.gov](mailto:pamstad@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: October 3, 2007.

**Jennifer Spaeth,**

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4990 Filed 10–9–07; 8:45 am]

BILLING CODE 4140–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Statement of Organization, Functions, and Delegations of Authority**

Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (40 FR 22859, May 27, 1975, as amended most recently at 71 FR 1446, January 9, 2006, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the transfer of the bioengineering and physical science functions from the Office of the Director, Office of Management, Office of Research Services (NAM5, formerly HNAM5), to the National Institute of Biomedical Imaging and Bioengineering (N8, formerly HN8).

Section N–B, *Organization and Functions*, is amended by replacing the current section N86 (formerly HN86) with the following:

*Intramural Research Programs (N86, formerly HN86)*. Responsible for all aspects of NIBIB intramural research, including staffing, facilities, and research programs. Also includes the Laboratory of Bioengineering and Physical Science, which contributes to the advancement of NIH research by the application of engineering, mathematics, and the physical sciences to the solution of problems in biology and medicine through (1) consultations and collaborative research with NIH intramural scientists in the areas of measurement, imaging, mathematical analysis, and modeling and the design of specialized research protocols and equipment; (2) proposing and developing theoretical and experimental methods, including novel instrumentation, to meet long-term needs of the NIH Intramural Research Program; and (3) serving as a liaison to other NIH and non-NIH organizations with bioengineering and physical science expertise to obtain and disseminate information on technological resources and development applicable to NIH intramural research problems.

Section N–B, *Organization and Functions*, under the heading “Office of Research Services (NAM5, formerly HNAM5)” is amended as follows:

Delete the “Division of Bioengineering and Physical Science (NAM58, formerly HNAM58)” in its entirety.

*Delegations of Authority Statement:*

All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect in them or their successors, pending further redelegation.

Dated: September 28, 2007.

**Raynard S. Kington,**

Acting Director, National Institutes of Health.

[FR Doc. E7–19933 Filed 10–9–07; 8:45 am]

BILLING CODE 4140–01–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Prospective Grant of Exclusive License: Devices for Countercurrent Chromatography**

AGENCY: National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in: HHS Ref. No. E-321-2007 "Second Generation Improved Spiral Tube Support for Countercurrent Chromatography" to CC Biotech LLC, a company incorporated under the laws of the State of Maryland having its headquarters in Rockville, Maryland. The United States of America

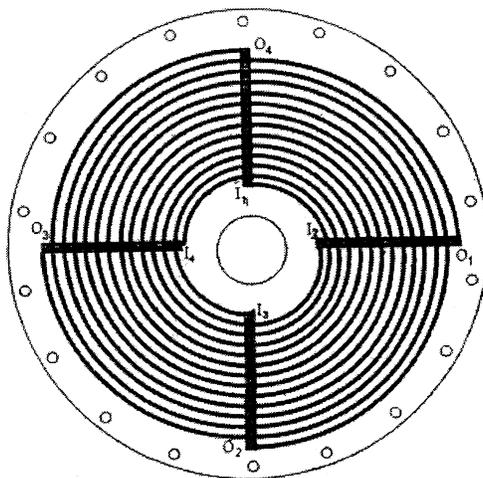
is the assignee of the rights of the above inventions. The contemplated exclusive license may be granted in a field of use limited to devices and components for centrifugal or countercurrent chromatographic purification, isolation, or preparation of biomolecules and macromolecules.

**DATES:** Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before December 10, 2007 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed

to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 435-5019; Facsimile: (301) 402-0220; E-mail: [shmilovm@mail.nih.gov](mailto:shmilovm@mail.nih.gov). A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

**SUPPLEMENTARY INFORMATION:** The patents and patent applications intended for licensure disclose or cover the following:



The support compactly holds spirally wound plastic tubing at a desired spiral pitch without connection. When mounted on the existing high-speed countercurrent chromatographic centrifuge, it will produce separation of bioactive compounds including proteins, nucleic acids, polysaccharides, and small molecular weight compounds from natural products without loss of samples in the separation column.

The present invention is an improvement on a spiral disc previously reported under E-014-2003 (now abandoned) which was published as WO 2004/085020. That disc differed in that the prior version the radial channels represented in the figure on the right (e.g., I<sub>1</sub>-O<sub>4</sub>; I<sub>4</sub>-O<sub>3</sub>, etc.) went all the way through the disc and ended at the outer wall and the center, thereby creating a channel that forced tubing to wrap around the device to re-enter the spiral grooves. Here, the direction of the tubing through the interleaved spiral grooves is continuous and the transition points between grooves are smoother. The design effectively eliminates about 5 cm of "dead-space," and allows for

the plates to be stackable; which was impossible with the previous design.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 1, 2007.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E7-19941 Filed 10-9-07; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Proposed Candidate Conservation Agreement With Assurances for Fisher for the Stirling Management Area, Sierra Pacific Industries, Butte, Plumas, and Tehama Counties, CA**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; receipt of application.

**SUMMARY:** Sierra Pacific Industries (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for a 20-year enhancement of survival permit for the fisher (*Martes pennanti*) pursuant to section 10(a)(1)(A) of the Endangered

Species Act of 1973, as amended (Act). The permit application includes a proposed Candidate Conservation Agreement with Assurances (Agreement) between the Applicant and the Service for the fisher on the 160,000 acre Stirling Management Area in Butte, Plumas, and Tehama Counties, California.

We are requesting comments on the permit application, the proposed Agreement and on the preliminary determination that the proposed Agreement is eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and the associated Screening Form, which are also available for public review.

**DATES:** Written comments should be received on or before November 9, 2007.

**ADDRESSES:** Comments should be addressed to the Field Supervisor, U. S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, California 96097. Written comments may be sent by facsimile to (530) 842-4517.

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Finley, Fish and Wildlife Biologist, Yreka Fish and Wildlife Office (see **ADDRESSES**); telephone: (530) 842-5763.

#### **SUPPLEMENTARY INFORMATION:**

##### **Availability of Documents**

Individuals wishing copies of the application, proposed Agreement, and EAS should immediately contact the Service by telephone at (530) 842-5763 or by letter to the Yreka Fish and Wildlife Office [see **ADDRESSES**]. Copies of the proposed Agreement and EAS also are available for public inspection during regular business hours at the Yreka Fish and Wildlife Office [see **ADDRESSES**]. The information above will also be available at the following Web address: <http://www.fws.gov/yreka>.

##### **Background**

Under a Candidate Conservation Agreement with Assurances (CCAA), participating landowners voluntarily implement conservation activities on their property to benefit proposed species, candidate species, and species likely to become candidates in the near future. Under a CCAA, non-Federal property owners commit to implement mutually agreed upon conservation measures which, when combined with benefits that would be achieved if it is assumed that those conservation measures were to be implemented on

other necessary properties, would preclude the need to list the covered species. In return for the landowner's proactive management, the Service provides an enhancement of survival permit under section 10(a)(1)(A) of the Act which, if the species were to become listed, would authorize the take of a specified number of individuals.

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1532(19)). However, under section 10(a) of the Act, the Service may issue permits to authorize take of listed species. For enhancement of survival permits, that take must be "incidental" as defined by the Service's implementing regulations as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.4). Regulations governing CCAs and their section 10(a)(1)(A) permits are found in the Code of Federal Regulations at 50 CFR 17.22(d) and 50 CFR 17.32(d).

The fisher is a candidate for listing under the Act. The extent of past timber harvest has been identified as one of the potential causes of fisher decline. Timber harvest has contributed to the loss of habitat, habitat fragmentation, and population isolation, which are current threats to the fisher. Removal or modification of mature and late-successional forest from large portions of the Sierra Nevada and Pacific Northwest has likely contributed to the significantly diminished distribution of fishers, within their historic range on the west coast.

The Agreement between the Applicant and the Service and the enhancement of survival permit are proposed for 20 years on the 160,000-acre Stirling Management Area located in Butte, Plumas, and Tehama Counties, California. The purpose of the proposed Agreement is to provide incentive for the Applicant to implement habitat conservation measures for fisher so as to increase the capability of the enrolled lands to support fisher. The amounts and spatial distribution of resting and denning habitat in this CCAA are necessarily experimental due to our level of uncertainty concerning the landscape habitat needs of fishers. The Applicant's forestland management over the 20-year permit period is proposed to increase fisher resting and denning habitat on the enrolled forestlands in the future. An additional purpose of this CCAA is to provide incentive for the

Applicant to accept translocated fisher onto the enrolled lands that historically contained fisher, but currently do not.

The permit would authorize incidental take of fisher consistent and associated with this CCAA, resulting from the otherwise lawful forest management activities on the Applicant's 160,000-acre Stirling Management Area. The covered forest management activities include felling and bucking timber, yarding timber, loading and landing operations, salvage of timber, transport of timber and rock, road construction and maintenance, rock pit construction and use, site preparation, tree planting, vegetation control, pre-commercial thinning and pruning, minor forest products, grazing, and fire suppression.

The Service has made a preliminary determination that approval of the proposed Agreement qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 8). Determination of a categorical exclusion is based on the following three criteria: (1) Implementation of the proposed Agreement would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed Agreement would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the proposed Agreement, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

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.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed Agreement, and comments submitted thereon to determine whether

the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will enter into the Agreement and issue a section 10(a)(1)(A) enhancement of survival permit under the Act to Sierra Pacific Industries for the incidental take of fisher from forestry activities on the Stirling Management Area in Butte, Plumas and Tehama Counties, California.

Dated: October 2, 2007.

**Phil Detrich,**

*Field Supervisor, Yreka Fish and Wildlife Office, California/Nevada Operations Office, Yreka, California.*

[FR Doc. E7-19893 Filed 10-9-07; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[MT-020-1010-PO]

**Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting**

**AGENCY:** Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The next two regular meetings of the Eastern Montana Resource Advisory Council will be held on November 14, 2007 and February 7, 2008 in Billings, MT. The meetings will start at 8 a.m. and adjourn at approximately 3:30 p.m. each day. The public comment period will be at 11 a.m. on each meeting date. When determined, the meeting location will be announced in a news release.

**FOR FURTHER INFORMATION CONTACT:** Mark Jacobsen, Public Affairs Specialist, BLM Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301. Telephone: (406) 233-2831.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics will include: Miles City and Billings Field Office manager updates, U.S. Forest Service recreation fees, Shepherd Ah Nei fee proposal

comment, travel management, public access and other issues that the council may raise. Topics for the February 7 meeting will be determined at the November 14 meeting.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: October 2, 2007.

**M. Elaine Raper,**

*Field Manager.*

[FR Doc. E7-19877 Filed 10-9-07; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[ID-957-1420-BJ]

**Idaho: Filing of Plats of Survey**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plats of surveys.

**SUMMARY:** The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709-1657.

**SUPPLEMENTARY INFORMATION:** These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 26 and 27, T. 62 N., R. 2 E., Boise Meridian, Idaho, was accepted July 13, 2007.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of sections 12 and 13, T. 14 S., R. 2 E., Boise Meridian, Idaho, was accepted July 18, 2007.

The plat constitutes the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and

the subdivision of section 9, T. 7 S., R. 36 E., Boise Meridian, Idaho, was accepted July 19, 2007.

The plat representing the corrective dependent resurvey of a portion of the south boundary and the dependent resurvey of portions of the south and east boundaries, subdivisional lines and 1870 meanders of the Snake River in sections 25 and 36, and the subdivision of sections 25 and 36, the survey of the 2003-2006 meanders of the right bank of the Snake River in sections 25 and 36, the survey of certain 2003-2006 partition lines in section 36, and the metes-and-bounds survey of lots 2 and 3 in section 25 and lot 11 in section 36, T. 1 S., R. 2 W., Boise Meridian, Idaho, was accepted July 19, 2007.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines and the boundaries of Mineral Survey No. 3585, and the subdivision of sections 4 and 5, in T. 10 N., R. 3 W., Boise Meridian, Idaho, was accepted August 9, 2007.

The plat representing the dependent resurvey of portions of the subdivisional lines and boundaries of Mineral Survey Nos. 3350 and 3585, and the subdivision of sections 32 and 33, in T. 11 N., R. 3 W., Boise Meridian, Idaho, was accepted August 9, 2007.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 23, in T. 5 S., R. 15 E., Boise Meridian, Idaho, was accepted August 17, 2007.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 28, in T. 7 S., R. 14 E., Boise Meridian, Idaho, was accepted August 30, 2007.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South (north boundary), and a portion of the subdivisional lines, and the subdivision of section 4, T. 7 S., R. 23 E., Boise Meridian, Idaho, was accepted September 14, 2007.

This survey was executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of sections 13, 14, 22, and 23, in T. 34 N., R. 1 E., Boise Meridian, Idaho, was accepted August 22, 2007.

Dated: October 3, 2007.

**Stanley G. French,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. E7-19889 Filed 10-9-07; 8:45 am]

BILLING CODE 4310-GG-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 Complainants' Motion To Amend the Complaint and Notice of Investigation by Adding an Additional 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 an initial determination ("ID") (Order No. 17) of the presiding administrative law judge ("ALJ") in the above-captioned investigation granting complainants' motion to amend the complaint and notice of investigation by adding an additional respondent.

**FOR FURTHER INFORMATION CONTACT:**

James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2065. 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 at <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:** The Commission instituted this investigation on May 10, 2007, based upon a complaint filed on behalf of Tate & Lyle Technology Ltd. of London, United Kingdom, and Tate & Lyle Sucralose, Inc. of Decatur, Illinois (collectively, "Tate & Lyle"). The complaint alleged a

violation of section 337(a)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of sucralose, sweeteners containing sucralose, and related intermediate compounds thereof by reason of infringement of various claims of United States Patent Nos. 4,980,463; 5,470,969; 5,034,551; 5,498,709; and 7,049,435. The notice of investigation named twenty-five respondents.

On August 17, 2007, Tate & Lyle filed a motion to add Heartland Sweeteners, LLC ("Heartland Sweeteners") as a respondent to the investigation. Heartland Sweeteners filed an opposition. The Commission investigative attorney filed a response in support of the motion.

On September 7, 2007, the ALJ issued the subject ID, granting the motion to add Heartland Sweeteners as a respondent. No petitions for review were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.14(b), 210.42(c), and 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR 210.14(b), 210.42(c), 210.42(h)(3)).

By order of the Commission.

Issued: October 3, 2007.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7-19862 Filed 10-9-07; 8:45 am]

BILLING CODE 7020-02-P

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Engineering (1170).

*Date/Time:* October 24th, 2007; 1-6 p.m. October 25th, 2007; 9 a.m.-12 p.m.

*Place:* National Science Foundation, Room 1235, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Shirah Pope, Executive Assistant, Office of the Assistant Director for Engineering 703-292-8300.

*Purpose of Meeting:* To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

*Agenda:* The principal focus of the meeting will be a discussion of emerging issues and

opportunities for the Directorate for Engineering and its divisions. Other topics include:

- Impact of Proposal Award and Management Mechanisms.
- Emerging Frontiers Research and Innovation Update.
- Subcommittee report on University-Industry Partnerships.
- NSF Broadening Participation Working Group.
- Engineering Education and Centers Division update and COV Report.

Dated: October 4, 2007.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E7-19917 Filed 10-9-07; 8:45 am]

BILLING CODE 7555-01-P

## NATIONAL SCIENCE FOUNDATION

### U.S. Chief Financial Officer Council; Grants Policy Committee

**ACTION:** Notice of open stakeholder webcast meeting.

**SUMMARY:** This notice announces the fourth of a series of open stakeholder webcast meetings sponsored by the Grants Policy Committee (GPC) of the U.S. Chief Financial Officers Council.

**DATES:** The GPC will hold a webcast meeting on Tuesday, October 30, 2007 from 2-3:30 p.m., Eastern Standard Time. The webcast will be broadcast live.

**ADDRESSES:** The GPC October 30 webcast meeting will be broadcast from and held in Room B-180 of the U.S. Department of Housing and Urban Development (HUD), 451 7th Street, SW., Washington, DC 20410. Seating is limited—the first 50 people to respond, and receive confirmation of the response, can be part of the live audience. Both federal and non-federal employees must R.S.V.P. to reserve your seat by contacting Charisse Carney-Nunes at [GPCWebcast@nsf.gov](mailto:GPCWebcast@nsf.gov). All who have reserved seating must arrive at the HUD building 15 minutes prior to broadcast (arrive on the North side of the building). You must have a photo ID to gain access and will have to go through the security screening. The GPC encourages non-federal organizations staffs and members to attend the meeting in person or via webcast.

*Overview:* The subject of this webcast meeting will be the draft strategic plan of the Grants Policy Committee, and the *potential future products* that the GPC may undertake in order to implement its strategy.

*Further Information About the GPC Webcast:* Questions on the webcast should be directed to Charisse Carney-Nunes, National Science Foundation,

4201 Wilson Boulevard, Arlington, VA 22230; e-mail, [GPCWebcast@nsf.gov](mailto:GPCWebcast@nsf.gov). Information and materials that pertain to this webcast meeting, including the call-in telephone number and the agenda will be posted on the Federal Grants Streamlining Initiative (FGSI) Web site at [http://www.grants.gov/aboutgrants/grants\\_news.jsp](http://www.grants.gov/aboutgrants/grants_news.jsp) under "October 30 Meeting Materials." The link to view the webcast will be posted on this site, along with Webcast instructions. After the meeting, a link to its recording will be posted on the FGSI Web site for at least 90 days.

**Comments Submission Information:** You may submit comments during the webcast meeting via telephone or e-mail. The call-in telephone number, which may be used only *DURING* the live webcast, is 202-708-0995. The e-mail address for comments, which should be used only *DURING* the webcast is [HUDTV@HUD.GOV](mailto:HUDTV@HUD.GOV). The e-mail address for comments after the webcast is [GPCWebcast@nsf.gov](mailto:GPCWebcast@nsf.gov). You may submit after webcast comments via e-mail through close of business Tuesday, November 13, 2007.

**SUPPLEMENTARY INFORMATION:** This webcast meeting has been made possible by the cooperation of the National Science Foundation, HUD, and the GPC.

**Webcast Materials:** Webcast materials including the agenda, the GPC's draft Strategic Plan, its list of potential future projects, webcast meeting slides, and feedback form are posted under the October 30, 2007 meeting materials. [http://www.grants.gov/aboutgrants/grants\\_news.jsp](http://www.grants.gov/aboutgrants/grants_news.jsp).

**Purpose of the webcast meeting:** The purpose of the webcast meeting is to receive public input on the draft strategic plan of the GPC. Specifically, the Committee seeks stakeholder input into the language describing the mission, vision, goals, and objectives of the GPC. The Committee will also seek input from the public regarding a list of *potential future products* that the GPC may undertake in order to implement its strategy. This draft list will present examples of possible products the GPC might undertake in order to implement its Strategic Plan. The list is not intended to represent a comprehensive list of all possible GPC products, nor does the list guarantee that the GPC will produce all of the listed products.

The webcast materials are being offered to stimulate public input into the GPC's long-term planning and prioritization efforts and to receive input from stakeholders to inform government efforts as they relate to streamlining and stewardship of federal

policy and practice relating to grants, cooperative agreements, and federal financial assistance.

**Meeting structure and agenda:** The October 30 webcast meeting will have the following structure and agenda:

- (1) Welcome by the host agency;
- (2) Presentation of Draft Strategic Plan by the Chair of the GPC;
- (3) Presentation of list of *potential future products* by the Chair of the GPC;
- (4) Participants' discussion, questions and comments.

**Background:** Background about the FGSI is set forth in the **Federal Register** published on September 13, 2006 (71 FR 54098).

Dated: October 3, 2007.

**Thomas Cooley,**

*Chair, Grants Policy Committee of the U.S. Chief Financial Officer Council.*

[FR Doc. E7-19915 Filed 10-9-07; 8:45 am]

**BILLING CODE 7555-01-P**

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## NUCLEAR REGULATORY COMMISSION

### Notice of Intent To Establish Independent External Review Panel To Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's Material Licensing Program

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** This notice is to announce the NRC intends to establish a new advisory committee.

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (NRC) is chartering a new advisory committee. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration. The committee, designated as the Independent External Review Panel to Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's Material Licensing Program is being tasked to respond to the NRC Office of the Inspector General (OIG) recommendation (OIG-07-A-12), " \* \* \* that the Executive Director for Operations convene an independent panel of experts external to the agency to identify agency vulnerabilities concerning NRC's material licensing and tracking programs and validate the agency's ongoing byproduct material security efforts." The OIG report also stated, "Such an assessment should necessarily include examination of the management, operational, and technical security controls and the extent to

which these controls are: (1) Implemented correctly, (2) operating as intended, and (3) producing the desired outcome with respect to mitigating security vulnerabilities."

In responding to this recommendation, the panel will include in its review an assessment of the existing and potential security vulnerabilities related to NRC's specific, import, export and general license programs. The panel is to also evaluate the apparent good-faith presumption that pervades the NRC licensing process (See Recommendation S-1 in the Action Plan).

The panel is expected to develop an agenda and plan for the review; this plan will include, as a minimum, assessment of pre-licensing guidance, licensing procedures, the licensing process, possession limits on licenses, and license reviewer training and oversight. The panel will document each significant issue identified and make appropriate recommendations and propose corrective actions.

The panel is being asked to complete and submit a report with recommendations to the Director of the Office of Federal and State Materials and Environmental Management Programs by January 31, 2008. In addition to documenting its recommendations and the bases for those recommendations, the panel will be asked to document other options that were considered and the reasons for not adopting them.

**For Further Information Please Contact:** Aaron McCraw (301-415-1277) [ATM@NRC.GOV](mailto:ATM@NRC.GOV), U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated: October 3, 2007.

**Andrew L. Bates,**

*Federal Advisory Committee Management Officer.*

[FR Doc. E7-19943 Filed 10-9-07; 8:45 am]

**BILLING CODE 7590-01-P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 070-00371 (Retired and Terminated)]**

### Notice of Consideration of Approval and Acceptance of the Decommissioning Plan for the Formerly Licensed United Nuclear Corporation—Naval Products Division New Haven, CT, License No. Snm-368 (Retired and Terminated) and Opportunity To Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of a decommissioning plan and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Laurie Kauffman, Project Manager, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406. Telephone: (610) 337-5323; fax number: (610) 337-5269; or e-mail: [lap@nrc.gov](mailto:lap@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Nuclear Regulatory Commission (NRC) is considering approval of a Decommissioning Plan (DP) for Special Nuclear Materials License Number SNM-368 (Terminated). This license was held by United Nuclear Corporation—Naval Products (UNC) (the former licensee) for its facilities located in New Haven and Montville, Connecticut.

In 1974, UNC closed the New Haven facility and transferred the radioactive materials inventory to the Montville site. The New Haven site was decontaminated and decommissioned from 1973 through 1976, and final radiological surveys were completed in 1976. The license was amended to remove the New Haven facility on April 22, 1976, and the site was released for unrestricted use in accordance with the existing regulations and guidance. Following the subsequent decontamination and decommissioning of the Montville site, the SNM-368 license was terminated on June 8, 1994.

In the early 1990s, the NRC initiated a program to ensure that past licenses had been terminated in accordance with the NRC's current release criteria for unrestricted use and contracted with the Oak Ridge National Laboratory (ORNL) to perform the review. During the review, ORNL identified that the New Haven facility did not have sufficient documentation to verify that the facility had been properly decontaminated prior to release. The NRC and Oak Ridge Institute for Science and Education (ORISE) conducted radiological surveys of the site in 1996 and determined that uranium contaminated soil remained at the New Haven facility with contamination levels which exceeded the 30 picoCuries/gram in soil or sediment limit established in the 1981 Branch Technical Position for "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations."

The former licensee conducted additional characterization activities

and resolved funding issues to allow for completion of the facility remediation and submitted a DP to the NRC by a letter dated June 7, 2005. UNC submitted its Final Status Survey Plan (FSSP) to supplement the DP on October 4, 2006. Before approving the proposed DP, the NRC needs to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in an Environmental Assessment in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51).

**II. Opportunity To Request a Hearing**

The NRC hereby provides notice that this is a proceeding on an action regarding decommissioning of the United Nuclear Corporation—Naval Products site for its facilities located in New Haven, Connecticut. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or

4. By 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.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. United Nuclear Corporation—Naval Products, 20 Research Parkway, Unit E,

Old Saybrook, CT 06475, Attention: Robert Bonito, General Manager of Operations; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415-3725, or by e-mail to [ogcmailcenter@nrc.gov](mailto:ogcmailcenter@nrc.gov).

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by December 10, 2007.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309 (f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.
2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.
3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309 (f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309 (g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

### III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Radiological Characterization of the former UNC Manufacturing Facility, New Haven, CT, dated May 31, 2005 (ML051780083 and ML051780088)  
Decommissioning Plan, Revision 1, dated July 7, 2005 (ML051780091)  
Final Status Survey Plan, dated October 4, 2006 (ML062910318)

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdrc@nrc.gov](mailto:pdrc@nrc.gov).

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 2nd day of October 2007.

For the Nuclear Regulatory Commission.

**Raymond Lorson,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E7-19951 Filed 10-9-07; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 040-06377]

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. Sub-348, for the Unrestricted Release of the Department of the Army, U.S. Army Research, Development and Engineering Command, Armament Research, Development and Engineering Center, Building 318 Facility in Picatinny, NJ

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

#### FOR FURTHER INFORMATION CONTACT:

Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406; telephone (610) 337-5040; fax number (610) 337-5269; or by e-mail: [exu@nrc.gov](mailto:exu@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. SUB-348. This license is held by the Department of the Army, U. S. Army Research, Development and Engineering Command (RDEC), Armament Research, Development and Engineering Center (ARDEC) (the Licensee), for its activities at the Picatinny Arsenal, located in Picatinny, New Jersey. Issuance of the amendment would authorize release of Building 318 for unrestricted use. The Licensee requested this action in a letter dated March 26, 2007. The NRC has prepared an Environmental Assessment

(EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

## II. Environmental Assessment

### *Identification of Proposed Action*

The proposed action would approve the Licensee's March 26, 2007, license amendment request, resulting in release of Building 318 for unrestricted use. License No. SUB-348 was issued on July 13, 1961, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to use uranium and thorium in any form for purposes of conducting research and development activities.

The Picatinny Arsenal is situated on 6,500 acres, and consists of residential, industrial, office space, laboratories, and specialized facilities. The Picatinny Arsenal is located in a mixed residential and commercial area. Building 318 was one of several buildings where use of licensed materials was performed under the authority of RDEC/ARDEC, one of the military tenants at Picatinny Arsenal. Building 318 is a single-story, brick, high-bay structure covering approximately 3,900 square-feet in area, of which an office occupies about 90 square-feet. The remaining area was used for storage of equipment that was contaminated with depleted uranium.

In the summer of 2002, the Licensee ceased licensed activities within Building 318 and initiated a survey and decontamination of Building 318. Based on the Licensee's historical knowledge of the site and the conditions of Building 318, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of Building 318 in August 2002 and initially requested approval for its unrestricted release in a letter dated October 8, 2002. However, NRC staff noted in a letter dated December 18, 2002, that the Licensee used outdated release criteria and did not approve release of Building 318 at that time. In March, 2007, the

Licensee provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release, based on the development of a site-specific criteria.

### *Need for the Proposed Action*

The Licensee has ceased conducting licensed activities in Building 318, and seeks the unrestricted use of Building 318.

### *Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted in Building 318 shows that such activities involved use only of depleted uranium, a radionuclide with a half-life greater than 120 days. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Building 318 affected by this radionuclide.

The Licensee conducted a final status survey on August 10–11, 2002, of Building 318. The final status survey report was attached to the Licensee's amendment request dated March 26, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by developing a derived concentration guideline level (DCGL) for Building 318. The Licensee conducted site-specific dose modeling using input parameters specific to Building 318 and assumed the light industrial building could be converted to a military residence. The Licensee used RESRAD-BUILD, Version 3.22, using all default parameters except: The removable fraction of surface contamination was set to 0.1; the source type selected was "area source"; and doses were evaluated at times of 0, 1, 2, 5, 10, 100, and 1,000 years. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release would be 2,413 disintegrations per minute (dpm) per 100-square-centimeters area (100 cm<sup>2</sup>). The NRC reviewed the Licensee's methodology and proposed DCGL when they were submitted with the March 26, 2007, request for release of Building 318 for unrestricted use. The NRC staff finds the licensee's proposed DCGL of 2,413 dpm/100 cm<sup>2</sup> to be acceptable. The Licensee's final status survey results were below this DCGL, and are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed

action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material in Building 318. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding Building 318. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of Building 318 for unrestricted use is in compliance with 10 CFR 20.1402. Although the Licensee will continue to perform licensed activities at other parts of the Picatinny Arsenal, the Licensee must ensure that this decommissioned area does not become recontaminated. Before the license can be terminated, the Licensee will be required to show that the entire facility, including previously-released areas, complies with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity in Building 318 and concluded that the proposed action will not have a significant effect on the quality of the human environment.

### *Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 40.42(d), requiring that decommissioning of source material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that Building 318 meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action

alternative is accordingly not further considered.

#### Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

#### Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey Department of Environmental Protection (NJDEP) for review on August 29, 2007. On September 4, 2007, NJDEP responded by letter. The State agreed with the conclusions of the EA.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

#### III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

[1.] Letter dated March 26, 2007 with "Derivation of a Site Specific DCGL for the Remediation of TACOM-ARDEC Picatinny Arsenal Building 318 and

Evaluation of Final Survey Results, October 2004" (ML070940607)

[2]. NUREG-1757, "Consolidated NMSS Decommissioning Guidance;"

[3]. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination;"

[4]. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"

[5]. NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 2nd day of October 2007.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E7-19948 Filed 10-9-07; 8:45 am]

**BILLING CODE 7590-01-P**

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 030-35986]

#### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 07-30728-01, for Unrestricted Release of Incyte Corporation's Facility in Newark, DE

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

#### FOR FURTHER INFORMATION CONTACT:

Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610-337-5366; fax number 610-337-5393; or by e-mail: [dlr1@nrc.gov](mailto:dlr1@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 07-30728-01. This license is held by Incyte Corporation (the Licensee), for its Stine Haskell Research Center, located at 1090 Elkton Road in Newark, Delaware (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated May 29, 2007, and responded to an information request by letter dated July 26, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

##### II. Environmental Assessment

###### Identification of Proposed Action

The proposed action would approve the Licensee's May 29, 2007, license amendment request, resulting in release of the Facility for unrestricted use. License No. 07-30728-01 was issued on May 20, 2002, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities typically performed on laboratory bench tops and in hoods. The proposed action pertains only to the cessation of licensed activities at the Facility. The license authorizes use of licensed material at other locations that will not be affected by this action, and the license will thus not be terminated if the proposed action is approved.

The Facility is situated in Buildings 112 and 115, totaling 32,400 square feet, and consists of general office space and laboratories. The Facility is located in an industrial area. Within the Facility, use of licensed materials was confined to Building 112, Laboratories 2, 28, and 37; and Building 115, Laboratories 83, 84, 85, 86, and 87. These laboratory areas totaled 1,600 square feet.

In August 2003, the Licensee ceased licensed activities at the Facility, and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the

conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

#### *Need for the Proposed Action*

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility.

#### *Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey during August and September 2003 but delayed making a final decision about whether or not to resume licensed activities there. The final status survey report was attached to the Licensee's amendment request dated May 29, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG-1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed

action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496) Volumes 1-3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

#### *Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff

concludes that the proposed action is the preferred alternative.

#### *Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the Office of Radiation Control, Division of Delaware Public Health for review on August 27, 2007. On September 17, 2007, the Office of Radiation Control, Division of Delaware Public Health responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

#### **III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### **IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG-1757, "Consolidated NMSS Decommissioning Guidance;"

2. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination;"

3. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"

4. NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological

Criteria for License Termination of NRC-Licensed Nuclear Facilities”

5. Incyte Corporation Amendment Request dated May 29, 2007 [ML071580670;

6. Incyte Corporation Deficiency Response Letter dated July 26, 2007 [ML072140797.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia this 2nd day of October 2007. For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E7-19957 Filed 10-9-07; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of October 8, 15, 22, 29; November 5, 12, 2007.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

#### Week of October 8, 2007.

There are no meetings scheduled for the Week of October 8, 2007.

#### Week of October 15, 2007—Tentative

There are no meetings scheduled for the Week of October 15, 2007.

#### Week of October 22, 2007—Tentative

*Wednesday, October 24, 2007*

9:25 a.m.

Affirmation Session (Public Meeting) (Tentative).

a. Final Rule—Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities (RIN 3150-AH49) (Tentative).

b. Pa'ina Hawaii, LLC (Material License Application) (Tentative).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>. 9:30 a.m.

Periodic Briefing on New Reactor Issues, Part 1 (Public Meeting) (Contact: Roger Rihm, 301-415-7807).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>. 1:30 p.m.

Periodic Briefing on New Reactor Issues, Part 2 (Public Meeting) (Contact: Roger Rihm, 301-415-7807).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

#### Week of October 29, 2007—Tentative

There are no meetings scheduled for the Week of October 29, 2007.

#### Week of November 5, 2007—Tentative

There are no meetings scheduled for the Week of November 5, 2007.

#### Week of November 12, 2007—Tentative

*Wednesday, November 14, 2007*

9:30 a.m.

Meeting with Advisory Committee on Nuclear Waste and Materials (ACNW&M) (Public Meeting) (Contact: Antonio Dias, 301-415-6805).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

\*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292.

Contact person for more information: Michelle Schroll, (301) 415-1662.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at [REB3@nrc.gov](mailto:REB3@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting

notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: October 4, 2007.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 07-5014 Filed 10-5-07; 10:23 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-331]

### FPL Energy Duane Arnold, LLC; Biweekly Notice; Application for Amendment to the Facility Operating License Involving Proposed No Significant Hazards Considerations; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of amendment request; Correction.

**SUMMARY:** This document corrects a notice appearing in the **Federal Register** on September 25, 2007 (72 FR 54472), that incorrectly referenced the licensee as Detroit Edison Company. This action is necessary to correct the erroneous reference.

**FOR FURTHER INFORMATION CONTACT:** Karl D. Feintuch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-3079, e-mail: [KDF@nrc.gov](mailto:KDF@nrc.gov).

**SUPPLEMENTARY INFORMATION:** On page 54472, in the second column, in the third complete paragraph, first line, the Notice is corrected to read from “Detroit Edison Company” to “FPL Energy Duane Arnold, LLC.”

Dated in Rockville, Maryland, this 2nd day of October 2007.

For the Nuclear Regulatory Commission.

**Karl D. Feintuch,**

*Project Manager, Plant Licensing Branch III-1, Division of Operating Reactor Licensing.*

[FR Doc. E7-19946 Filed 10-9-07; 8:45 am]

BILLING CODE 7590-01-P

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

[Docket No. WTO/DS368]

**WTO Dispute Settlement Proceeding  
Regarding U.S. Antidumping and  
Countervailing Duty Measures on  
Coated Free Sheet Paper From China**

**AGENCY:** Office of the United States  
Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on September 14, 2007, the People's Republic of China ("China") requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") concerning certain U.S. preliminary antidumping and countervailing duty determinations involving coated free sheet paper imported from China (Department of Commerce Case Nos. A-570-906 and A-570-907). That request may be found at <http://www.wto.org> contained in a document designated as WT/SD368/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the consultations, comments should be submitted on or before October 31, 2007 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to [FR0721@ustr.eop.gov](mailto:FR0721@ustr.eop.gov), with "China Coated Paper (DS368)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

**FOR FURTHER INFORMATION CONTACT:** James P. Kelleher, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-3150.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. In an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). If such consultations should

fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within approximately nine months after it is established.

**Major Issues Raised by China**

China's consultations request concerns the Department of Commerce's preliminary antidumping and countervailing duty determinations regarding coated free sheet paper imported from China:

- "Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China," (72 *Federal Register* ("FR") 30758 of 4 June 2007); and
- "Coated Free Sheet Paper from China: Amended Preliminary Affirmative Countervailing Duty Determination," (72 FR 17484 of 9 April 2007).

With respect to these preliminary determinations, China's request raises issues regarding (1) the determinations that the countervailed subsidies were "specific" or limited to certain industries or companies, (2) the benefit calculation for a government loan program, (3) the calculation of the amount of subsidy, and (4) the calculation of the amount of dumping.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to [FR0721@ustr.eop.gov](mailto:FR0721@ustr.eop.gov), with "China Coated Paper (DS368)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily

be released to the public by the commenter. Confidential business information must be clearly designated as such and "BUSINESS CONFIDENTIAL" must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter

(1) Must clearly so designate the information or advice;

(2) must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions; the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS-368 China Coated Paper) may be made by calling the USTR Reading Room at (202) 395-6186.

**Daniel Brinza,**

*Assistant United States Trade Representative  
for Monitoring and Enforcement.*

[FR Doc. 07-4999 Filed 10-9-07; 8:45 am]

**BILLING CODE 3190-W8-P**

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

[Docket No. WTO/DS-362]

**WTO Dispute Settlement Proceeding  
Regarding China—Measures Affecting  
the Protection and Enforcement of  
Intellectual Property Rights**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”), at the request of the United States the WTO Dispute Settlement Body has established a dispute settlement panel to review the U.S. claims concerning certain measures pertaining to the protection and enforcement of intellectual property rights in China. The panel request may be found at <http://www.wto.org> contained in a document designated as WT/DS362/7. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute, comments should be submitted on or before November 16, 2007, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) Electronically, to [FR0707@ustr.eop.gov](mailto:FR0707@ustr.eop.gov), with “China IPR Protection and Enforcement (DS362)” in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

**FOR FURTHER INFORMATION CONTACT:** Steven F. Fabry, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-3150.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that at the request of the United States the WTO Dispute Settlement Body on September 25, 2007, established a dispute settlement panel pursuant to the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). Such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and

recommendations within approximately nine months after it is established.

**Major Issues Raised by the United States**

The first matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties. China has established these thresholds through the following measures, as well as any amendments and related or implementing measures: the Criminal Law of the People’s Republic of China, in particular Articles 213, 214, 215, 217, 218, and 220; and two interpretations by the Supreme People’s Court and the Supreme People’s Procuratorate on several issues of concrete application of law in handling criminal cases of infringing intellectual property (one adopted on November 2, 2004, and the other adopted on April 4, 2007). It appears that certain acts of trademark counterfeiting and copyright piracy occurring on a commercial scale in China are not subject to criminal procedures and penalties in China. China’s measures appear to be inconsistent with China’s obligations under Articles 41.1 and 61 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (“TRIPS Agreement”).

The second matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns goods that infringe intellectual property rights that are confiscated by Chinese customs authorities, in particular the disposal of such goods following removal of their infringing features. In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures: the Regulations of the People’s Republic of China for Customs Protection of Intellectual Property Rights, in particular Chapter 4 thereof, the Implementing Measures of Customs of the People’s Republic of China for the Regulations of the People’s Republic of China on Customs Protection of Intellectual Property Rights, in particular Chapter 5 thereof, and the General Administration of Customs Announcement No. 16 (April 2, 2007). It appears that, because of these measures, the customs authorities appear to be required to give priority to options for disposal of goods that infringe intellectual property rights that would allow such goods to enter the channels of commerce (for instance,

through auctioning the goods after removing their infringing features). The requirement that infringing goods be released into the channels of commerce under the circumstances set forth in the measures at issue appears to be inconsistent with China’s obligations under Article 59 of the TRIPS Agreement.

The third matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns China’s denial of the protection of its Copyright Law to creative works of authorship (and, to the extent Article 4 of the Copyright Law applies to them, sound recordings and performances) that have not been authorized for, or are otherwise prohibited from, publication or distribution within China. For example, it appears that works that are required to undergo censorship review (or other forms of pre-publication or pre-distribution review) before entering the Chinese market are not protected by copyright before the review is complete and publication and distribution within China has been authorized. In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures:

- The Copyright Law, in particular Article 4;
- the Criminal Law, the Regulations on the Administration of Publishing Industry, the Regulations on the Administration of Broadcasting, the Regulations on the Administration of Audiovisual Products, the Regulations on the Administration of Films, and the Regulations on the Administration of Telecommunication;
- the Regulations on Administration of the Films Industry
- the Administrative Regulations on Audiovisual Products;
- the Administrative Regulation on Publishing;
- the Administrative Regulations on Electronic Publications;
- the Measures for the Administration of Import of Audio and Video Products;
- the Procedures for Examination and Approval for Publishing Finished Electronic Publication Items Licensed by a Foreign Copyright Owner;
- the Procedures for Examination and Approval of Importation of Finished Electronic Publication Items by Electronic Publication Importation Entities;
- the Procedures for Recording of Imported Publications;
- the Interim Regulations on Internet Culture Administration; and
- the Several Opinions on the Development and Regulation of Network Music.

It appears that, because of the Copyright Law, authors of works whose publication or distribution has not been authorized or is otherwise prohibited

appear not to enjoy the minimum standards of protection specially granted by the *Berne Convention for the Protection of Literary and Artistic Works (1971)* (the "Berne Convention") in respect of those works (and may never enjoy such protection if the work is not authorized, or is not authorized for distribution or publication in the form as submitted for review). In addition, the rights of authors of works whose publication or distribution is required to undergo pre-publication or pre-distribution review appear to be subject to the formality of successful conclusion of such review. The foregoing appears to be inconsistent with China's obligations under Articles 9.1, 41.1 and 61 of the TRIPS Agreement. Furthermore, to the extent that the Copyright Law also denies the protection of certain rights to performers and producers of sound recordings during the period of any pre-publication or pre-distribution prohibition, the Copyright Law appears to be inconsistent with China's obligations under Articles 14, 41.1 and 61 of the TRIPS Agreement.

In addition, it appears that the measures at issue provide different pre-distribution and pre-authorization review processes for Chinese nationals' works, performances (or their fixations) and sound recordings than for foreign nationals' works, performances (or their fixations) and sound recordings. To the extent that these different processes, taken together with Article 4 of the Copyright Law, result in earlier or otherwise more favorable protection or enforcement of copyright or related rights for Chinese authors' works, Chinese performers' performances (or their fixations) and Chinese producers' sound recordings than for foreign authors' works, foreign performers' performances (or their fixations) and foreign producers' sound recordings, the measures at issue appear to be inconsistent with China's obligations under TRIPS Agreement Articles 3.1, 9.1, 41.1 and 61.

#### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) Electronically, to [FR0707@ustr.eop.gov](mailto:FR0707@ustr.eop.gov), with "China IPR Protection and Enforcement (DS362)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail.

Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and "BUSINESS CONFIDENTIAL" must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and
- (3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions; the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS-362, China

IPR Protection and Enforcement Dispute) may be made by calling the USTR Reading Room at (202) 395-6186.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 07-5000 Filed 10-9-07; 8:45 am]

BILLING CODE 3190-W8-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 204-3, SEC File No. 270-42, OMB Control No. 3235-0047.

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.

The title for the collection of information is "Rule 204-3 (17 CFR 275.204-3) under the Investment Advisers Act of 1940" (15 U.S.C. 80b). Rule 204-3, the "brochure rule," requires an investment adviser to deliver their brochure to their new clients or prospective clients before or at the start of the advisory relationship. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Rule 204-3 also requires that an investment adviser deliver, or offer in writing to deliver upon written request, the brochure to their existing clients annually in order to provide them with current information about the adviser. Under rule 204-3, the investment adviser must furnish the required information to clients and prospective clients by providing either a copy of Part II of Form ADV, the investment adviser registration form, or a written document containing at least the information required by Part II of Form ADV. This collection of information is found at 17 CFR 275.204-3 and is mandatory.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were

10,787 advisers registered with the Commission as of August 31, 2007. The Commission has estimated that compliance with rule 204-3 imposes a burden of approximately 639.87 hours annually based on an average adviser having 670 clients. Based on this figure, the Commission estimates a total annual burden of 6,902,278 hours for this collection of information.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

October 1, 2007.

**Nancy M. Morris,**  
Secretary.

[FR Doc. E7-19855 Filed 10-9-07; 8:45 am]

BILLING CODE 8011-01-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:

Form ADV, SEC File No. 270-39, OMB Control No. 3235-0049.

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 (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The title for the collection of information is "Form ADV" (17 CFR 279.1). Form ADV is the investment adviser registration form filed electronically with the Commission pursuant to rules 203-1 (17 CFR 275.203-1) and 204-1 (17 CFR 275.204-1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) by advisers registered with the Commission or applying for registration with the Commission. The information collected takes the form of disclosures to the investment adviser's clients and potential clients. The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, and its conflicts of interest. Clients use certain of the information to determine whether to hire or retain an adviser.

The information collected provides the Commission with knowledge about the adviser, its business, and its conflicts of interest. The Commission uses the information to determine eligibility for registration with the Commission and to manage its regulatory, examination, and enforcement programs.

Respondents to the collection of information are investment advisers registered with the Commission or applying for registration with the Commission. The Commission estimates that the total annual reporting and recordkeeping burden of the collection of information for each respondent is 23.375 hours.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: October 1, 2007.

**Nancy M. Morris,**  
Secretary.

[FR Doc. E7-19856 Filed 10-9-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2668; 803-184]

### Franklin Portfolio Associates, LLC; The Hirtle Callaghan Trust; Notice of Application

October 3, 2007.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

*Applicants:* Franklin Portfolio Associates, LLC ("Franklin"); The Hirtle Callaghan Trust ("Trust"); together ("Applicants").

*Relevant Advisers Act Sections:* Exemption requested under section 206A of the Advisers Act from section 205 of the Advisers Act and Advisers Act rule 205-1.

*Summary of Application:* Applicants request an order permitting Franklin to charge a performance fee based on the performance of that portion of a Trust portfolio managed by Franklin ("Franklin Account"). Applicants further request that the order permit them to compute the performance-related portion of the fee using changes in the Franklin Account's gross asset value rather than net asset value.

*Filing Dates:* The application was filed on July 7, 2005, and amended and restated on August 3, 2006 and October 1, 2007.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 29, 2007, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

Applicants, Franklin Portfolio Associates, LLC, c/o David Dirks, One Boston Place, 29th Floor, Boston, Massachusetts 02108; The Hirtle Callaghan Trust, c/o Rhonda Fell, Five Tower Bridge, 300 Barr Harbor Drive, Suite 500, West Conshohocken, PA 19428.

**FOR FURTHER INFORMATION CONTACT:** David W. Blass, Assistant Director, or Vivien Liu, Senior Counsel, at (202) 551-6787 (Office of Investment Adviser Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

### Applicant's Representations

1. Franklin is an investment adviser registered under the Advisers Act. The Trust is an open-end management investment company registered under the Investment Company Act of 1940. The Trust was organized in 1994 by Hirtle, Callaghan & Co. ("Hirtle Callaghan"), an investment adviser registered under the Advisers Act. The Trust is a series company that currently consists of several separate investment portfolios. Shares of the Trust are available only to clients of Hirtle Callaghan or clients of financial intermediaries, such as investment advisers that are acting in a fiduciary capacity with investment discretion and that have established relationships with Hirtle Callaghan.

2. Hirtle Callaghan serves as a "manager of managers" for the Trust. Hirtle Callaghan is responsible for monitoring the overall investment performance of the Trust's portfolios and the performance of the portfolio managers that manage the Trust's portfolios. Hirtle Callaghan may also from time to time recommend that the Trust's Board of Trustees (the "Board") retain additional portfolio managers or terminate existing portfolio managers. Authority to select new portfolio managers and reallocate assets among the portfolio managers, however, resides with the Trust's Board.

3. Franklin is one of five investment advisers that provide portfolio management services to the Small Capitalization Equity Portfolio ("Portfolio") of the Trust. Each of these advisers is responsible for the management of a discrete portion of the Portfolio's assets on a day-to-day basis. In doing so each acts as though it were advising a separate investment

company. Percentage limitations on investments are applied to each portion of the Portfolio without regard to the investments in the other advisers' portions of the Portfolio. When each adviser receives information about portfolio positions from the Trust or its custodian, the adviser generally receives only information about the portion of the Portfolio assigned to it, and not information about the positions held by the Portfolio as a whole. Each adviser generally is responsible for preparing reports to the Trust and the Board only with respect to its discrete portion of the Portfolio.

4. Franklin is not affiliated with Hirtle Callaghan, the Trust or any other investment advisory organization that provides portfolio management and services to the Trust. Services provided to the Trust by Franklin are limited to investment selection for the Franklin Account, placement of transactions for execution, and certain compliance functions directly related to such services. Franklin and its affiliates do not act as a distributor or sponsor for the Trust or Portfolio. No member of the Trust's Board is affiliated with Franklin.

5. Franklin currently receives a fee at the annual rate of 0.40 percent of the average daily net asset value of the Franklin Account, payable monthly. On August 26, 2004 the Trust's Board approved an amendment to the portfolio management agreement between Franklin and the Trust under which the existing fee structure would be replaced with a fee structure that includes a performance component ("Proposed Amendment"). On October 25, 2004 the shareholders of the Portfolio approved the Proposed Amendment. The Proposed Amendment would become effective on the first day of the month following receipt of an order from the Commission approving the application. Franklin's fee would be adjusted to reflect the performance of the Franklin Account only after the Proposed Amendment has been in effect for 12 months (the "Initial Period").

6. Under the Performance Fee Amendment, Franklin's fee for each of the first three quarters of the Initial Period, would consist of a fee ("Base Fee") computed by multiplying the average daily net assets of the Franklin Account for that quarter by the Designated Applicable Fee Rate, dividing the product by 365 and multiplying the resulting amount by the number of days in the quarter. The Designated Applicable Rate is: 0.40 percent for quarters when the average assets of the account are less than \$100 million, or 0.35 percent for quarters when the average assets of the account

are equal to or greater than \$100 million.<sup>1</sup>

For the fourth quarter of the Initial Period, Franklin would receive a fee equal to the Designated Applicable Rate applied to the average daily net assets of the Franklin Account for the fourth quarter, divided by 365 and then multiplied by the number of days in that quarter plus or minus a Performance Component multiplied by the average daily net assets of the Account for the Initial Period. The Performance Component for the Initial Period would be calculated by (a) computing the difference between (i) the total return of the Franklin Account without regard to expenses incurred in the operation of the Franklin Account ("Gross Total Return") during the Initial Period, and (ii) the return of the Russell 2000 Index during the Initial Period plus 0.40 percent; and (b) multiplying the resulting factor by 10 percent.

7. For each quarterly period subsequent to the Initial Period, Franklin would be entitled to receive quarterly payments of the Base Fee (approximately 0.10 percent or 0.0875 percent (10 or 8.75 basis points), respectively, depending upon the level of assets of the Franklin Account, as detailed above) of the average daily net assets of the Franklin account plus or minus 25 percent of the Performance Component multiplied by the average daily net assets of the Franklin Account for the immediately preceding 12 month period, on a "rolling basis."<sup>2</sup> The Performance Component for such subsequent periods would be calculated by (a) computing the difference between (i) the Gross Total Return of the Franklin Account during the immediately preceding 12 month period and (ii) the return of the Russell 2000 Index during such period plus the Designated Applicable Rate; and (b) multiplying the resulting factor by 10 percent.

8. None of the expenses of the Portfolio, including the advisory fee

<sup>1</sup> Expressed mathematically, the Base Fee is calculated as follows:  $\{[(\text{"Designated Applicable Rate"}) \times (\text{average daily net assets})] / X\} \times N$ , where "X" = the number of days in the preceding 12 month period and "N" = the number of days in the quarter. The average daily net assets are calculated over the preceding quarter during the first three quarters of the initial period and over the preceding 12 month period thereafter.

<sup>2</sup> "Rolling Basis" means that, at each quarterly fee calculation, the Gross Total Return of the Franklin Account, the Index Return and the average daily net assets of the Franklin Account for the most recent quarter will be substituted for the corresponding values of the earliest quarter included in the prior fee calculation. Both the Base Fee and the Performance Component are calculated based on the same rolling period as described in this footnote and the accompanying text.

paid to Franklin, would be deducted from the performance of the Franklin Account for purposes of calculating the Gross Total Return. However, the Gross Total Return would reflect the effect (*i.e.*, reducing performance) of all applicable brokerage and transaction costs.

9. The maximum annual fee payable under the Performance Fee Amendment would not exceed 0.70 percent (70 basis points) with respect to any 12-month period when assets of the Franklin Account are less than \$100 million (or 0.60 percent (60 basis points) with respect to any 12-month period when quarterly assets of the Franklin Account in each quarter are equal to or in excess of \$100 million) and cannot exceed 0.175 percent (17.5 basis points), for any calendar quarter when assets of the Franklin account are less than \$100 million (or 0.15 percent (15 basis points), for any calendar quarter when assets of the Franklin account are equal to or more than \$100 million). Franklin is guaranteed a minimum annual fee of 0.10 percent (10 basis points).

10. Because no performance adjustment will be paid until the end of the Initial Period, it is possible that payments of the Base Fee made to Franklin during the first 9 months may exceed the appropriate performance adjusted fee if the Performance Component has been negative. In the event of such an occurrence, the Proposed Amendment provides a "recoupment feature" pursuant to which advisory fees payable to Franklin will be reduced until the difference between the aggregate quarterly fees received by Franklin with respect to the Initial Period and the performance adjusted fee is fully recouped by the Trust. However, if the portfolio management agreement with Franklin is terminated before any recoupment has been fully accounted for, the Trust would not be able to recoup any outstanding excess that had been paid in previous quarters.

#### Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into any investment advisory agreement that provides for compensation to the adviser on the basis of a share of capital gains or capital appreciation of a client's account.

2. Section 205(b) of the Advisers Act provides a limited exception to this prohibition, permitting an adviser to charge a registered investment company and certain other persons a fee that is based on asset value of the company or fund under management averaged over

a specified period and increases and decreases "proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation or order may specify."

3. Rule 205-1 under the Advisers Act requires that the investment performance of an investment company be computed based on the change in the net (of all expenses and fees) asset value per share of the investment company.

4. Applicants request exemptive relief from section 205 of the Advisers Act and rule 205-1 thereunder to permit them to (i) apply the proposed fee only to the Franklin Account and not to the Portfolio as a whole, and (ii) compute the Performance Component measured by the change in the Franklin Account's gross asset value, rather than the change in its net asset value.

5. Applicants state that Congress, in adopting and amending section 205 of the Advisers Act, and the Commission, in adopting rule 205-1, put into place safeguards designed to ensure that investment advisers would not take advantage of advisory clients.

6. Applicants assert that the Commission required that performance fees be calculated based on the net asset value of the investment company's shares to prevent a situation where an adviser could earn a performance fee even though investment company shareholders did not derive any benefit from the adviser's performance after the deduction of fees and expenses.

7. Applicants state that, unlike traditional performance fee arrangements, Franklin would not receive the Performance Component of its fee unless its management of the Franklin Account has resulted in performance in excess of the Index performance plus a "performance hurdle" equal to the Designated Applicable Rate. Applicants assert that increasing the performance of the Index by the above stated hurdle would have an effect similar to deducting Franklin's fees. In the event the base fee changes, the performance hurdle also would be changed to match the Base Fee. Applicants state that since the fee structure contains a performance hurdle, the Portfolio's shareholders will have protections similar to those contemplated by the net asset value requirement of rule 205-1.

8. Applicants suggest that Congress' concern, in enacting the safeguards of section 205, came about because the vast majority of investment advisers exercised a high level of control over the

structuring of the advisory relationship. Applicants state that the proposed fee, however, was negotiated actively at arm's-length between the Trust and Franklin. Applicants state that Franklin has little, if any, influence over the overall management of the Trust or the Portfolio beyond stock selection, and does not control the Portfolio or the Trust. Management functions of the Trust and the Portfolio reside in the Trust's Board. The Trust is directly and fully responsible for supervising the Trust's service providers and monitoring expenses of each of the Trust's portfolios. The Trust's Board is responsible for allocating the assets of the several portfolios among the portfolio managers. Neither Franklin nor any of its affiliates sponsored or organized the Trust, or serves as a distributor or principal underwriter of the Trust. Franklin and its affiliates do not own any shares issued by the Trust. No officer, director or employee of Franklin, nor any of its affiliates, serves as an executive officer or director of the Trust. Neither Franklin nor any of its affiliates is an affiliated person of Hirtle Callaghan or any other person who provides investment advice with respect to the Trust's advisory relationships (except to the extent that such affiliation may exist by reason of Franklin or any of its affiliates serving as investment adviser to the Trust). No member of the Trust's Board is affiliated with Franklin.

9. Applicants state that the proposed fee arrangement satisfies the purpose of rule 205-1 because it was negotiated at arms-length and the Trust, for the reasons stated in the previous paragraphs, does not need the protections afforded by calculating a performance fee based on net assets. Applicants argue that the proposed fee arrangement is therefore consistent with the underlying policies of section 205 and rule 205-1 under the Advisers Act and that the exemption would be consistent with the protection of investors.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. If the Base Fee changes, the performance hurdle will be changed to match the Base Fee and to ensure that the investment advisory fee continue to have the potential to increase and decrease proportionately.

2. To the extent Franklin relies on the requested order with respect to advisory arrangements with other investment companies that it advises, those arrangements will meet the following requirements: (i) The investment

advisory fee will be negotiated on an arm's-length basis between Franklin and the investment company or its primary investment adviser; (ii) the fee structure will contain a performance hurdle that is, at all times, no lower than the base fee; and should the base fee change, the hurdle also will be changed to match the base fee and to ensure that the investment advisory fee continues to have the potential to increase and decrease proportionally; (iii) neither Franklin nor any of its affiliates will serve as distributor or sponsor of the investment company; (iv) no member of the board of the investment company will be affiliated with Franklin or its affiliates; (v) neither Franklin nor any of its affiliates will organize the investment company; (vi) neither Franklin nor any of its affiliates will be an affiliated person of any primary adviser to the investment company or of any other person who provides advice with respect to the investment company's advisory relationships (except to the extent that Franklin and/or its affiliates may be affiliated with another portfolio manager by virtue of the fact that Franklin or the affiliate serves as a portfolio manager to the investment company or to another investment company); and (vii) other than described in this application, the Applicants will comply with section 205 and rules 205-1 and 205-2 under the Advisers Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Nancy M. Morris,**  
Secretary.

[FR Doc. E7-19912 Filed 10-9-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2667; 803-186]

### IronBridge Capital Management LP; The Hirtle Callaghan Trust; Notice of Application

October 3, 2007.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

**APPLICANTS:** IronBridge Capital Management LP ("IronBridge"); The Hirtle Callaghan Trust ("Trust"); together ("Applicants").

**RELEVANT ADVISERS ACT SECTIONS:** Exemption requested under section 206A of the Advisers Act from section

205 of the Advisers Act and Advisers Act rule 205-1.

**SUMMARY OF APPLICATION:** Applicants request an order permitting IronBridge to charge a performance fee based on the performance of that portion of a Trust portfolio managed by IronBridge ("IronBridge Account"). Applicants further request that the order permit them to compute the performance-related portion of the fee using changes in the IronBridge Account's gross asset value rather than net asset value.

**FILING DATES:** The application was filed on July 7, 2005, and amended and restated on August 3, 2006 and October 1, 2007.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 29, 2007, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, IronBridge Capital Management LP, c/o Samuel T. Eddins, One Parkview Plaza, Suite 600, Oakbrook Terrace, Illinois 60181; The Hirtle Callaghan Trust, c/o Rhonda Fell, Five Tower Bridge, 300 Barr Harbor Drive, Suite 500, West Conshohocken, PA 19428.

**FOR FURTHER INFORMATION CONTACT:** David W. Blass, Assistant Director, or Vivien Liu, Senior Counsel, at (202) 551-6787 (Office of Investment Adviser Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

#### Applicant's Representations

1. IronBridge is an investment adviser registered under the Advisers Act. The Trust is an open-end management investment company registered under the Investment Company Act of 1940.

The Trust was organized in 1994 by Hirtle, Callaghan & Co. ("Hirtle Callaghan"), an investment adviser registered under the Advisers Act. The Trust is a series company that currently consists of several separate investment portfolios. Shares of the Trust are available only to clients of Hirtle Callaghan or clients of financial intermediaries, such as investment advisers that are acting in a fiduciary capacity with investment discretion and that have established relationships with Hirtle Callaghan.

2. Hirtle Callaghan serves as a "manager of managers" for the Trust. Hirtle Callaghan is responsible for monitoring the overall investment performance of the Trust's portfolios and the performance of the portfolio managers that manage the Trust's portfolios. Hirtle Callaghan may also from time to time recommend that the Trust's Board of Trustees (the "Board") retain additional portfolio managers or terminate existing portfolio managers. Authority to select new portfolio managers and reallocate assets among the portfolio managers, however, resides with the Trust's Board.

3. IronBridge is one of five investment advisers that provide portfolio management services to the Small Capitalization Equity Portfolio ("Portfolio") of the Trust. Each of these advisers is responsible for the management of a discrete portion of the Portfolio's assets on a day-to-day basis. In doing so each acts as though it were advising a separate investment company. Percentage limitations on investments are applied to each portion of the Portfolio without regard to the investments in the other advisers' portions of the Portfolio. When each adviser receives information about portfolio positions from the Trust or its custodian, the adviser generally receives only information about the portion of the Portfolio assigned to it, and not information about the positions held by the Portfolio as a whole. Each adviser generally is responsible for preparing reports to the Trust and the Board only with respect to its discrete portion of the Portfolio.

4. IronBridge is not affiliated with Hirtle Callaghan, the Trust or any other investment advisory organization that provides portfolio management and services to the Trust.<sup>1</sup> Services provided to the Trust by IronBridge are limited to investment selection for the IronBridge Account, placement of transactions for

<sup>1</sup> IronBridge does not have any affiliates at this time. Future affiliates, if any, will comply with the terms of any order issued by the Commission in connection with this application.

execution, and certain compliance functions directly related to such services. IronBridge and its affiliates do not act as a distributor or sponsor for the Trust or Portfolio. No member of the Trust's Board is affiliated with IronBridge.

5. IronBridge currently receives a fee at the annual rate of 0.60 percent of the average daily net assets of the IronBridge Account, payable monthly. On August 26, 2004 the Trust's Board approved an amendment to the portfolio management agreement between IronBridge and the Trust under which the existing fee structure would be replaced with a fee structure that includes a performance component ("Proposed Amendment"). On October 25, 2004 the shareholders of the Portfolio approved the Proposed Amendment. The Proposed Amendment would become effective on the first day of the month following receipt of an order from the SEC approving the application. IronBridge's fee would be adjusted to reflect the performance of the IronBridge Account only after the Proposed Amendment has been in effect for 12 months (the "Initial Period").

6. Under the proposed fee arrangement, at the end of each of the first three quarters of the Initial Period, IronBridge would receive a base fee at the annual rate of 0.60 percent of the average daily net assets of the IronBridge Account ("Base Fee").<sup>2</sup> At the end of the fourth quarter of the Initial Period, IronBridge would receive the Base Fee adjusted by a factor referred to as the performance component. The performance component would equal 25 percent of the difference between (i) the total return of the IronBridge Account during the preceding 12 months calculated without regard to the expenses incurred in the operation of the IronBridge Account ("Gross Total Return") and (ii) the sum of the total return of the Russell 2000 Index ("Index Return") during the same 12-month period plus a performance hurdle of 60 basis points ("Performance Component").

7. None of the expenses of the Portfolio, including IronBridge's advisory fee, would be deducted from the performance of the IronBridge Account for purposes of calculating the Gross Total Return. However, the Gross Total Return would reflect the effect (*i.e.*, reducing performance) of all applicable brokerage and transaction costs.

<sup>2</sup> The Base Fee is calculated as follows:  $\{[(.60\%)(\text{average daily net assets})] / X\} \times N$ , where "X" = the number of days in the preceding 12 month period and "N" = the number of days in the quarter.

8. Because no performance adjustment will be paid until the end of the Initial Period, it is possible that payments of the Base Fee made to IronBridge during the first nine months may exceed the appropriate performance-adjusted fee if the Performance Component has been negative. In the event of such an occurrence, the Proposed Amendment provides a "recoupment feature" pursuant to which the advisory fees payable to IronBridge will be reduced until the difference between the aggregate quarterly fees received by IronBridge with respect to the Initial Period and the performance adjusted fee is fully recouped by the Trust. However, if the portfolio management agreement with IronBridge is terminated before any recoupment has been fully accounted for, the Trust would not be able to recoup any outstanding excess that had been paid in previous quarters.

9. For each quarter following the fourth quarter of the Initial Period, IronBridge would receive the quarterly payments of the Base Fee (approximately 15 percent (15 basis points) of the average daily net assets of the IronBridge Account), plus or minus 25 percent of the Performance Component multiplied by the average daily net assets of the IronBridge Account for the immediately preceding 12-month period, on a "rolling basis."<sup>3</sup>

10. The maximum annual fee payable for any 12-month period would not exceed 1.20 percent (120 basis points), or 0.30 percent (30 basis points) with respect to any quarter. IronBridge is not guaranteed any minimum annual fee. Therefore, it is possible that IronBridge's annual fee may fall to zero.

#### Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into any investment advisory agreement that provides for compensation to the adviser on the basis of a share of capital gains or capital appreciation of a client's account.

2. Section 205(b) of the Advisers Act provides a limited exception to this prohibition, permitting an adviser to charge a registered investment company and certain other persons a fee that is based on asset value of the company or

<sup>3</sup> "Rolling Basis" means that, at each quarterly fee calculation, the Gross Total Return of the IronBridge Account, the Index Return and the average daily net assets of the IronBridge Account for the most recent quarter will be substituted for the corresponding values of the earliest quarter included in the prior fee calculation. Both the Base Fee and the Performance Component are calculated based on the same rolling period as described in this footnote and the accompanying text.

fund under management averaged over a specified period and increases and decreases "proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation or order may specify."

3. Rule 205-1 under the Advisers Act requires that the investment performance of an investment company be computed based on the change in the net (of all expenses and fees) asset value per share of the investment company.

4. Applicants request exemptive relief from section 205 of the Advisers Act and rule 205-1 thereunder to permit them to (i) apply the proposed fee only to the IronBridge Account and not to the Portfolio as a whole, and (ii) compute the Performance Component measured by the change in the IronBridge Account's gross asset value, rather than the change in its net asset value.

5. Applicants state that Congress, in adopting and amending section 205 of the Advisers Act, and the SEC, in adopting rule 205-1, put into place safeguards designed to ensure that investment advisers would not take advantage of advisory clients.

6. Applicants assert that the Commission required that performance fees be calculated based on the net asset value of the investment company's shares to prevent a situation where an adviser could earn a performance fee even though investment company shareholders did not derive any benefit from the adviser's performance after the deduction of fees and expenses.

7. Applicants state that, unlike traditional performance fee arrangements, IronBridge would not receive the Performance Component of its fee unless its management of the IronBridge Account has resulted in performance in excess of the Index performance plus a "performance hurdle" equal to the 0.60 percent of the average daily net asset value of the IronBridge Account. Applicants assert that increasing the performance of the Index by the 0.60 percent hurdle would have an effect similar to deducting IronBridge's fees. In the event the Base Fee changes, the performance hurdle also would be changed to match the Base Fee. Applicants state that since the fee structure contains a performance hurdle, the Portfolio's shareholders will have protections similar to those contemplated by the net asset value requirement of rule 205-1.

8. Applicants suggest that Congress' concern, in enacting the safeguards of section 205, came about because the

vast majority of investment advisers exercised a high level of control over the structuring of the advisory relationship. Applicants state that the proposed fee, however, was negotiated actively at arm's length between the Trust and IronBridge. Applicants state that IronBridge has little, if any, influence over the overall management of the Trust or the Portfolio beyond stock selection, and does not control the Portfolio or the Trust. Management functions of the Trust and the Portfolio reside in the Trust's Board. The Trust is directly and fully responsible for supervising the Trust's service providers and monitoring expenses of each of the Trust's portfolios. The Trust's Board is responsible for allocating the assets of the several portfolios among the portfolio managers. Neither IronBridge nor any of its affiliates sponsored or organized the Trust, or serves as a distributor or principal underwriter of the Trust. IronBridge and its affiliates do not own any shares issued by the Trust. No officer, director or employee of IronBridge, nor any of its affiliates, serves as an executive officer or director of the Trust. Neither IronBridge nor any of its affiliates is an affiliated person of Hirtle Callaghan or any other person who provides investment advice with respect to the Trust's advisory relationships (except to the extent that such affiliation may exist by reason of IronBridge or any of its affiliates serving as investment adviser to the Trust). No member of the Trust's Board is affiliated with IronBridge.

9. Applicants state that the proposed fee arrangement satisfies the purpose of rule 205-1 because it was negotiated at arms-length and the Trust, for the reasons stated in the previous paragraphs, does not need the protections afforded by calculating a performance fee based on net assets. Applicants argue that the proposed fee arrangement is therefore consistent with the underlying policies of section 205 and rule 205-1 under the Advisers Act and that the exemption would be consistent with the protection of investors.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. If the Base Fee changes, the performance hurdle will be changed to match the Base Fee and to ensure that the investment advisory fee continue to have the potential to increase and decrease proportionately.

2. To the extent IronBridge relies on the requested order with respect to advisory arrangements with other

investment companies that it advises, those arrangements will meet the following requirements: (i) The investment advisory fee will be negotiated on an arm's-length basis between IronBridge and the investment company or its primary investment adviser; (ii) the fee structure will contain a performance hurdle that is, at all times, no lower than the base fee; and should the base fee change, the hurdle also will be changed to match the base fee and to ensure that the investment advisory fee continue to have the potential to increase and decrease proportionately; (iii) neither IronBridge nor any of its affiliates will serve as distributor or sponsor of the investment company; (iv) no member of the board of the investment company will be affiliated with IronBridge or its affiliates; (v) neither IronBridge nor any of its affiliates will organize the investment company; (vi) neither IronBridge nor any of its affiliates will be an affiliated person of any primary adviser to the investment company or of any other person who provides advice with respect to the investment company's advisory relationships (except to the extent that IronBridge and/or its affiliates may be affiliated with another portfolio manager by virtue of the fact that IronBridge or the affiliate serves as a portfolio manager to the investment company or to another investment company); and (vii) other than described in this application, Applicants will comply with section 205 and rules 205-1 and 205-2 under the Advisers Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E7-19913 Filed 10-9-07; 8:45 am]  
BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

##### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 9, 2007:

A Closed Meeting will be held on Thursday, October 11, 2007 at 1:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 11, 2007 will be:

Formal order of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims;

An adjudicatory matter; and

Other matters related to enforcement actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: October 4, 2007.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E7-19923 Filed 10-9-07; 8:45 am]  
BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56598; File No. SR-Amex-2007-48]

##### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Modifying the Options Listing Criteria for Underlying Securities

October 2, 2007.

On May 17, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Amex's options listing criteria to allow Amex to list and trade equity options that do not meet Amex's initial listing standards if such options are listed and traded on another

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

national securities exchange and meet Amex's continued listing standards for equity options. On August 21, 2007, Amex amended the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 31, 2007.<sup>3</sup> The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires that the rules of an exchange be 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. The proposal is narrowly tailored to address the circumstances where an equity option class is currently ineligible for initial listing on the Exchange even though it meets the Exchange's continued listing standards and is trading on another options exchange. Allowing Amex to list and trade options on such underlying securities should help promote competition among the exchanges that list and trade options. The Commission notes that the Exchange represented that the procedures that the Exchange currently employs to determine whether a particular underlying security meets the initial equity option listing criteria for the Exchange will similarly be applied when determining whether an underlying security meets the Exchange's continued listing criteria.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-Amex-2007-48) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Nancy M. Morris**,  
Secretary.

[FR Doc. E7-19870 Filed 10-9-07; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>3</sup> See Securities Exchange Act Release No. 56328 (August 24, 2007), 72 FR 50423.

<sup>4</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56597; File No. SR-Amex-2007-90]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish a Fee on a Listed Company That Changes Its Corporate Name or Ticker Symbol

October 2, 2007.

On August 16, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Section 142 of the Amex *Company Guide* in order to impose a fee on a listed company that changes its name or ticker symbol. The Exchange filed Amendment No. 1 to the proposed rule change on August 27, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 31, 2007.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

Currently, Amex does not impose a fee on a listed company that changes its corporate name or ticker symbol. Amex represents, however, that significant staff resources are needed to effectuate such a change when one occurs. This process includes, among other things, contacting the issuer's outside counsel, updating internal Amex files, tracking the name change through the issuer's shareholder approval process, updating daily list records, and notifying the floor.

In light of the staff resources required to effectuate these changes, the Exchange proposes a \$2,000 fee for a name and/or ticker symbol change.<sup>4</sup> Amex notes that Nasdaq currently charges \$2,500 for the same type of change.<sup>5</sup>

The Commission has reviewed carefully the Amex's proposed rule change and finds that the proposal is

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 56325 (August 27, 2007), 72 FR 50421.

<sup>4</sup> Amex has represented that the proposed fee would not apply to changes to par value, title, or security designation, as these types of changes occur infrequently, and in virtually all cases constitute a substitution listing which is already subject to a fee of at least \$5,000.

<sup>5</sup> See Nasdaq Rules 4510 and 4520.

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Sections 6(b)(4) of the Act,<sup>7</sup> which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, *inter alia*, that the rules of the Exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and not designed to permit unfair discrimination between issuers. No comments were received on the proposed fee, which is substantially similar to a fee imposed by another self-regulatory organization that has been approved by the Commission.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2007-90), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Nancy M. Morris**,  
Secretary.

[FR Doc. E7-19907 Filed 10-9-07; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 48631 (October 15, 2003), 68 FR 60426 (October 22, 2003) (SR-NASD-2003-127) (approving amendments to Nasdaq Rules 4510 and 4520 to institute a \$2,500 record-keeping fee for certain changes made by issuers, including a change of name or voluntary change in trading symbol).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56594; File No. SR-BSE-2007-25]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3 Thereto, Relating to Registration Filing Requirements and Reporting Requirements

October 1, 2007.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 2007, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On August 7, 2007, BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 7, 2007, BSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On September 26, 2007, BSE filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendments No. 1, 2, and 3 thereto, from interested persons and approve the proposed rule change on an accelerated basis.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to: (1) Amend BSE Rules Chapter I-B Sections 4, 5, and 6 and Chapter XVIII Section 4 and Boston Options Exchange (“BOX”) Rules Chapter II Sections 1(b)(i) and Section 4(b), Chapter XI Sections 2(b), 3(a), and 4(c) and Chapter X Section 2(e), to require all members, and member and participant organizations, that do not already participate in Web Central Registration Depository (“Web CRD”) as a member of a participating exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”) to submit Forms U4, U5, BD and amendments thereto as well as fingerprints, to the

Web CRD;<sup>6</sup> (2) amend Exchange Rules Chapter I-B Sections 4, 5, and 6 and Chapter XVIII Section 4 to add language specifying a timeframe in which to amend Form U4, Form U5, and Form BD; and (3) amend its Minor Rule Violation Plan (“MRVP”) by adopting new provisions for failures to submit amendments to Form U4, Form U5, and Form BD.<sup>7</sup>

The text of the proposed rule change is available at the principal office of the BSE, the Commission’s Public Reference Room, and <http://www.bostonstock.com>.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 purpose of the proposed rule change is to create a more efficient, centralized registration process by migrating from a manual paper-based Exchange procedure to Web CRD for registration and fingerprinting, with more defined deadlines and a more streamlined disciplinary process.

##### Web CRD

The Web CRD process would assist in maintaining all historical information related to associated persons of member, and participant organizations in one central repository, as well as creating efficient disclosure utilizing an online

<sup>6</sup> Web CRD is a Web-based system that provides broker-dealers and their associated persons “one-stop filing” with the Commission, FINRA, and other self-regulatory organizations and regulators. Web CRD is operated by FINRA and is utilized by participating securities regulators in connection with registering and licensing broker-dealers and their associated persons.

<sup>7</sup> Rule 19d-1(c)(1) under the Act, 17 CFR 240.19d-1(c)(1), requires any self-regulatory organization, for which the Commission is the appropriate regulatory agency, that takes any final disciplinary action with respect to any person to promptly file a notice thereof with the Commission. However, rule violations resulting in a fine not exceeding \$2,500 are not deemed final and therefore not subject to the same reporting requirements.

database, which can be accessed by other exchanges and regulators. Additionally, the Web CRD process would track and capture information related to registration and continuing education. Finally, the Web CRD system would capture information related to fingerprinting and statutory disqualification.

Members, and member and/or participant organizations, would be required to submit Forms U4 and U5 (and amendments thereto) through the Web CRD system rather than in paper form to the Exchange. Currently, members, and member and/or participant organizations, submit Forms U4 and U5 in paper form to the Exchange. Although Form BD is required to be submitted to Web CRD, the proposed rule change codifies this requirement into BSE Rules Chapter I-B Sections 4, 5, and 6 and Chapter XVIII Section 4 and BOX Rules Chapter II Sections 1(b)(i) and Section 4(b), Chapter XI Sections 2(b), 3(a), and 4(c) and Chapter X Section 2(e), and applies to amendments as well.<sup>8</sup>

Members, and member and/or participant organizations, also currently file manual rolled fingerprint cards<sup>9</sup> with the Exchange, which the Exchange then forwards to the FBI, the fingerprint processing arm of the Office of the Attorney General of the United States. The FBI identifies submitted fingerprints, retrieves relevant criminal history information, and returns fingerprint reports (including the original fingerprint cards) to the Exchange. Upon receipt of the approved fingerprint cards, the Exchange sends this information to the member organization and keeps a copy for its records. This proposed rule change would require the members, and member and/or participant organizations, to send the fingerprint cards to FINRA for processing. All trading personnel and other associated persons of members, and member or participant organizations, who are not registered and only submit fingerprint cards to FINRA, will be classified as Non-Registered Fingerprint (“NRF”) filers.

The Exchange anticipates that the proposed migration to Web CRD will take place on October 1, 2007. The Exchange will provide notification in writing to the membership of the effective date of the rule change.

Additionally, the Exchange is amending the language in BOX Chapter

<sup>8</sup> 17 CFR 240.15b-1.

<sup>9</sup> FINRA will accept Federal Bureau of Investigation (“FBI”) fingerprint results in lieu of fingerprint cards.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 superseded and replaced the original rule filing in its entirety.

<sup>4</sup> Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety.

<sup>5</sup> Amendment No. 3 superseded and replaced Amendment No. 2 in its entirety.

XI Doing Business With The Public, Section 2(b) to clarify the registration obligations of Options Principals.

#### Minor Rule Violation Plan

The Exchange is adding language to BSE's and BOX's MRVPs to clarify the timeframe within which members, and member and/or participant organizations, must amend Forms U4, U5, and BD to allow for prompt disclosure. The Exchange proposes a timeframe of thirty days from the time the filer knew of or should have known of the facts which gave rise to the need for an amendment, to submit amended Forms U4, U5, and BD. By including this language in the Exchange Rules, Boston Stock Exchange Regulation ("BSER") would retain the discretion to initiate formal disciplinary proceedings.<sup>10</sup> The Exchange believes that the proposed change should encourage member organizations and participant organizations to timely file Forms U4, U5, and BD and thereby timely disclose the information contained in those forms. The disclosure of this information should enable the Exchange and the public to receive current information on registered persons and entities.

Specifically, the proposed changes to the MRVP would authorize the Exchange to impose a fine on any member or participant organization without formal disciplinary action. As proposed, BSER would review the number and seriousness of the violation(s), as well as the previous disciplinary history of the violator, to determine if a matter is appropriate for disposition under the MRVP. Once a member or participant organization is fined under the MRVP, BSER may issue progressively higher fines for all subsequent violations within a rolling twelve-month period, or it may choose to initiate formal disciplinary proceedings. The addition of these changes to the Exchange's MRVP should allow BSER to impose more meaningful sanctions for violations that would otherwise receive a cautionary letter, for example, but do not necessarily rise to the level of a formal disciplinary proceeding.

Additionally, the proposed changes would allow for disposition of minor or

<sup>10</sup> Section 6(b)(6) requires an exchange to have rules that provide for members and associated persons to be appropriately disciplined for violations of the Act, the rules thereunder, and the Exchange's rules. 15 U.S.C. 78f(b)(6). Inclusion of a rule in an MRVP permits an exchange to impose a fine, under appropriate circumstances under the MRVP. However, including a rule in an MRVP does not limit an exchange's ability to bring a formal disciplinary action against a member or an associated person.

technical violations of Exchange rules by means of a less costly and less time consuming process as compared to a formal disciplinary process. Expediting resolutions for technical violations, while retaining the discretion to bring formal disciplinary action, should allow for efficient dispositions of rule violations.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing information to a central repository.

Importantly, the Exchange believes, moving to Web CRD provides a central location where information is available. This enables easier access to all members and member and/or participant organizations. Further, most other exchanges participate in Web CRD registration.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

#### III. 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:

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2007-25 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-BSE-2007-25. 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 BSE. 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-BSE-2007-25 and should be submitted on or before October 31, 2007.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed

<sup>13</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the Exchange's rules be 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.

The Commission believes that the changes proposed by BSE should result in a more efficient process for members to register and to keep information current and should make regulatory information with respect to members and their associated persons more readily available to regulators as well as the public. Furthermore, it will align the rules of the Exchange regarding electronic registration more closely with those at other exchanges.

In addition, the Commission believes the proposed rule change is consistent with the Act because it is designed to allow BSE to discipline or sanction members under its MRVP for violation of the provisions of the rules of the Exchange for these rules. In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of a self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations of its rules, the MRVP provides a reasonable means to address violations that do not rise to the level of requiring formal BSE disciplinary proceedings. The Commission expects that BSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of Exchange rules under the MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

BSE has requested that the Commission find good cause for approving the proposed rule change before the thirtieth day after publication of the notice in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow the Exchange to migrate to Web CRD on its intended date, October 1, 2007. The Commission notes that it has approved similar proposals to

implement electronic registration for Chicago Board Options Exchange, Incorporated<sup>15</sup> and the Philadelphia Stock Exchange.<sup>16</sup> The Commission believes that BSE's proposal raises no new regulatory issues, and it should make regulatory information with respect to its members and their associated persons more readily available without further delay.

Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>17</sup> to grant accelerated approval to the proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-BSE-2007-25), as modified by Amendments No. 1, 2, and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7-19906 Filed 10-9-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56600; File No. SR-CBOE-2007-88]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Amend the Hybrid Opening System Opening Rotations Rules

October 2, 2007.

On July 25, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its opening rotations rules conducted via the Hybrid Opening System ("HOSS"). The proposed rule

<sup>15</sup> See Securities Exchange Act Release No. 46308 (August 2, 2002), 67 FR 51905 (August 9, 2002) (SR-CBOE-2001-66).

<sup>16</sup> See Securities Exchange Act Release No. 54960 (December 12, 2006), 71 FR 77851 (December 27, 2006) (SR-Phlx-2006-83).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> *Id.*

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

change was published in the **Federal Register** on August 29, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. The Exchange proposes to amend HOSS procedures contained in CBOE Rule 6.2B. HOSS procedures currently provide that HOSS initiates an opening rotation for an options class at a randomly selected time within a number of seconds after the primary market<sup>4</sup> for the underlying security opens (or after 8:30 a.m. (Central Time) for index options).<sup>5</sup>

The Exchange proposes to permit HOSS to initiate the opening rotation for an options class after the opening of the underlying security on: (1) The primary listing market; (2) the primary volume market,<sup>6</sup> or (3) 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 basis by the appropriate Exchange Procedure Committee and announced to the membership via a Regulatory Circular.

After a careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal will provide

<sup>3</sup> See Securities Exchange Act Release No. 56302 (August 22, 2007), 72 FR 49752.

<sup>4</sup> According to the Exchange, for purposes of CBOE Rule 6.2B, the Exchange has interpreted the "primary market" to be the primary listing market.

<sup>5</sup> According to the Exchange, for purposes of CBOE Rule 6.2B, the Exchange determines when the underlying market "opens", on a class-by-class basis, to be either the opening trade and/or opening quote (or whichever occurs first). Once the underlying market opens, HOSS initiates the overlying option class opening and sends a Rotation Notice to market participants. Thereafter, HOSS would open the series of a class in a random order.

<sup>6</sup> Proposed CBOE Rule 6.2B(b) would define the primary volume market as the market with the most liquidity in that underlying security for the previous two calendar months.

<sup>7</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

the Exchange more flexibility to determine when to permit the HOSS opening rotation process to begin, and should contribute to the Exchange's ability to conduct openings in a fair and orderly manner. Further, the Commission notes that it previously approved a similar rule changes for the American Stock Exchange LLC.<sup>9</sup>

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2007-88) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-19905 Filed 10-9-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56602; File No. SR-CBOE-2007-116]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Hybrid Electronic Quoting Fee

October 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Hybrid Electronic Quoting Fee. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.cboe.org/legal>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposed rule change is to amend CBOE's Hybrid Electronic Quoting Fee, which is applicable to all Market-Makers, RMMs, DPMs and e-DPMs (collectively "liquidity providers") in order to promote and encourage more efficient quoting.<sup>5</sup> The fee has been effective since February 1, 2007.

Under the existing fee, all liquidity providers who are submitting electronic quotations to the Exchange in Hybrid and Hybrid 2.0 option classes are assessed a monthly fee of \$450. Each month, each liquidity provider receives an allocation of 1,000,000 quotes. If a liquidity provider submits to CBOE more than 1,000,000 quotes in a month, the liquidity provider is assessed an additional fee of \$.03 per 1,000 quotes in excess of 1,000,000.

As amended, CBOE will continue to assess all liquidity providers who are submitting electronic quotations to the Exchange in Hybrid and Hybrid 2.0 option classes a monthly fee of \$450 per membership utilized. However, CBOE proposes to assess or credit liquidity

providers a Hybrid Electronic Quoting Fee that varies depending on: (i) The quality of the liquidity providers' quotation (a quotation is a bid and an offer); and (ii) the value of the underlying security and CBOE's bid in the option series.<sup>6</sup> CBOE also proposes to vary the fee slightly in "high premium series"<sup>7</sup> with respect to Market-Makers and RMMs on the one hand, and DPMs and e-DPMs on the other hand due to the difference in their quoting obligations. Market-Makers and RMMs have an obligation to continuously quote 60% of the series in each of their appointed classes that have a time to expiration of less than 9 months. DPMs and e-DPMs, however, have a greater obligation and must continuously quote either 100% of the series in their appointed classes (DPMs) or 90% if the series in their appointed classes (e-DPMs). CBOE generally has found that there are a significant amount of quotations in high premium series, but very little volume.

Specifically, the Hybrid Electronic Quoting Fee will be assessed/credited as follows:

If the value of the underlying security is less than or equal to \$100 and CBOE's bid is less than or equal to \$10, or if the value of the underlying security is greater than \$100 and CBOE's bid is less than or equal to 15% of the underlying security, then:

- A liquidity provider's quotation that improves the NBBO on at least one side of the market will be credited \$0.02 per 1,000 quotes.
- A liquidity provider's quotation that matches the NBBO on both sides of the market will be credited \$0.01 per 1,000 quotes.
- A liquidity provider's quotation that matches the NBBO on only one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.
- A liquidity provider's quotation that matches the CBOE BBO (which is not the NBBO) on at least one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.
- A liquidity provider's quotation that is a duplicate quote,<sup>8</sup> or that does

<sup>6</sup> The value of the underlying security is the closing price of the underlying security on the preceding trading day. The bid is the closing bid in the option series at CBOE on the preceding trading day.

<sup>7</sup> For purposes of this fee, "high premium series" are those series in which the value of the underlying security is less than or equal to \$100 and CBOE's bid is greater than \$10, or those series in which the value of the underlying security is greater than \$100 and CBOE's bid is greater than 15% of the underlying security.

<sup>8</sup> A "duplicate quote" is one where there is no change in bid and offer price and size. See proposed Item 17 of the Fees Schedule, at note 5, as set forth in CBOE's Form 19b-4.

<sup>9</sup> See Securities Exchange Act Release No. 55272 (February 12, 2007), 72 FR 7779 (February 20, 2007) (approving SR-Amex-2006-77, permitting the American Stock Exchange LLC to open its trading rotation once the underlying security has opened for trading in any market).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> Because the Hybrid Quoting Fee is only applicable in Hybrid and Hybrid 2.0 option classes, it does not apply to LMMs, which currently only function in Hybrid 3.0 option classes. Therefore, the Exchange is proposing to delete the reference to LMMs in the Hybrid Electronic Quoting Fee section of Item 17 of the Fees Schedule.

not satisfy any of the above conditions will be assessed a fee of \$0.05 per 1,000 quotes.

If the value of the underlying security is less than or equal to \$100 and CBOE's bid is greater than \$10, or if the value of the underlying security is greater than \$100 and CBOE's bid is greater than 15% of the underlying security, then:

- A liquidity provider's quotation that improves the NBBO on at least one side of the market will be credited \$0.02 per 1,000 quotes.

- A liquidity provider's quotation that matches the NBBO on both sides of the market will be credited \$0.01 per 1,000 quotes.

- A liquidity provider's quotation that matches the NBBO on only one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.

- A Market-Maker's or RMM's quotation that matches the CBOE BBO (which is not the NBBO) on at least one side of the market will be assessed a fee of \$0.05 per 1,000 quotes; and a DPM's or e-DPM's quotation that matches the CBOE BBO (which is not the NBBO) on at least one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.

- A liquidity provider's quotation that is a duplicate quote, or that does not satisfy any of the above conditions will be assessed a fee of \$0.05 per 1,000 quotes.

As before, the Hybrid Electronic Quoting Fee will be assessed by liquidity provider acronym. In the event a liquidity provider is utilizing more than one membership and submits electronic quotations for all of the memberships under the same acronym, the Hybrid Electronic Quoting Fee will be assessed per membership utilized by the liquidity provider. Because a liquidity provider's total credits cannot exceed the total debits assessed according to the schedule of credits and debits set forth in the two tables in Item 17 of the Fees Schedule, if the total credits were to exceed the total debits, the Hybrid Electronic Quoting Fee assessed to that liquidity provider would be \$450.

Also, if a liquidity provider is assessed the Hybrid Electronic Quoting Fee, the liquidity provider does not pay a member dues fee. The Exchange intends to implement this revised Hybrid Electronic Quoting Fee effective October 1, 2007.

CBOE believes that the Hybrid Electronic Quoting Fee, as amended, is fair and reasonable and will promote and encourage more efficient quoting and help to reduce quote traffic. The fee encourages and rewards liquidity providers that quote competitively, and imposes costs on liquidity providers

that do not. The fee also fairly and reasonably takes into consideration the different quoting obligations of the various liquidity providers and, therefore, represents an equitable allocation of fees among members.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable fees, and other charges among CBOE members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> since it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-116 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-2007-116. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2007-116 and should be submitted on or before October 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E7-19910 Filed 10-9-07; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>13</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56599; File No. SR-NYSE-2007-93]

### Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Rule 70 (Bids and Offers) and Rule 104 (Dealings by Specialists)

October 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2007, the New York Stock Exchange, LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On October 2, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 70 (Bids and Offers) and Exchange Rule 104 (Dealings by Specialists) to reduce the requirement that a Floor broker and a specialist, respectively, post 1,000 shares of displayed liquidity at the Exchange best bid or offer in order to use the reserve function. The text of the proposed rule change is available on the NYSE’s Web site (<http://www.nyse.com>), at the NYSE, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaces and supersedes the original filing in its entirety.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange seeks to amend Exchange Rules 70.20 and 104(d) to reduce the requirement that a Floor broker and a specialist, respectively, post 1,000 shares of displayed liquidity at the Exchange best bid or offer in order to use the reserve function.

##### a. Current Ability to Use Reserve Function

Currently, Floor brokers’ interest is represented electronically by including these orders in a separate file (“Floor broker agency interest file”) within the Exchange’s Display Book system.<sup>4</sup> Floor brokers are permitted to place the liquidity representing customer orders at or outside the best bid or offer on the Exchange (“Exchange BBO”). Similarly, specialists have the ability to place in a separate file (“specialist interest file”) within the Display Book system their dealer interest at prices at or outside the Exchange BBO. Pursuant to Exchange Rules 70.20 and 104(d), some of the interest in either of these files that is at the Exchange BBO may, at the choice of the Floor broker or specialist, be non-displayed interest. That is, the Floor broker or specialist may decide to hold additional interest in “reserve” and not have it be part of the published bid or offer. Reserve interest is eligible to participate in automatic executions on the Exchange after displayed interest on that side of the market trades. Reserve Floor broker interest and specialist interest participate on parity with each other when trading with contra-side interest.

Exchange Rules 70.20 and 104(d) further provide that Floor brokers and specialists, respectively, must display a minimum of 1,000 shares of interest at the Exchange BBO on the same side of the market in order to maintain undisplayed reserve interest at that price. For example, if a Floor broker or specialist were to choose to have non-displayed interest in their files at the Exchange bid, 1,000 shares must be

<sup>4</sup> The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

made part of the disseminated bid.<sup>5</sup> Both Rule 70.20 and Rule 104(d) require that, if an execution occurs that does not exhaust displayed Floor broker or specialist interest at the Exchange BBO, the displayed interest would automatically be replenished from any reserve interest so that at least 1,000 shares (or whatever amount remains if less than 1,000 shares) would be displayed.

##### b. Reduction of Minimum Display Requirement

The Exchange is proposing to reduce the minimum display requirement that Floor brokers and specialists must meet to one round-lot (for most stocks, 100 shares) in order to have non-displayed interest in the Exchange market. The ability to have reserve interest was designed, in part, to allow Floor brokers flexibility to determine the best way in which to represent customer orders, especially larger customer orders. One way in which they can do this is to decide what portion of customer interest should be displayed based on the Floor broker’s sense of the market in a particular security. The reserve gives customers the advantage of both auction market and automatic execution capability, without the risk of missing the market.

The Exchanges believe that, for specialists, the reserve function allows the possibility of more liquidity at the best bid or offer price and facilitation of single-price executions on behalf of customers.

The Exchange has found that the current display requirement may be acting as a hindrance to the utilization of Floor broker agency interest and specialist interest file reserve functionality. For many stocks traded on the Exchange, 1,000 shares would be a sizeable order or would represent a sizeable position commitment for a specialist based on the trading characteristics of the stock. In less active securities, there would be no ability to use the reserve functionality since there would not be a sufficient volume of shares available beyond the current minimum display requirement.

This can have a compounding effect of inhibiting trading that could take place if reserves could be available for executions beyond the displayed

<sup>5</sup> Specialists were originally required to have 2,000 shares of displayed interest at the Exchange BBO in order to have non-displayed reserve interest. However, on June 30, 2006, the Commission approved a proposed rule change submitted by the Exchange to conform the minimum display to that for Floor brokers. See Securities Act Release No. 54086 (June 30, 2006), 71 FR 38953 (July 10, 2006) (SR-NYSE-2006-24).

quotation. In addition, the Exchange is aware that concerns associated with possible signaling of interest have arisen in connection with the display requirement. The Exchange states that, as trade and quote sizes have declined on the Exchange,<sup>6</sup> analysis of displayed amounts or the absence of a displayed amount can signal that there is no reserve available and inform a trader or an algorithm that order size can be limited at a particular price point. Additional interest may then be priced at higher or lower prices, creating more volatility.

The Exchange believes that the reduction of the minimum display requirement will not have a detrimental impact on trading or quoting on the Exchange. There remains an incentive for displaying interest, versus non-display of interest, in that displayed interest has priority in execution over non-displayed interest. Reduction of the display requirement will also allow Floor brokers and specialists the flexibility to align their strategies more closely to the trading characteristics of individual stocks and the market in general without an imposed minimum of 1,000 shares.

The Exchange is retaining the ability to automatically replenish the displayed amount of interest at the Exchange BBO when trades reduce or exhaust such displayed interest. As is currently the case today, the displayed quantity will be replenished based on the initial instructions from the Floor broker or specialist. For example, assume a Floor broker or specialist had originally placed 2,000 shares in reserve and had given instructions to maintain 500 shares as a displayed amount in the quote. If an execution takes place which reduces the displayed amount to 200 shares, 300 shares would be shifted from the reserve to replenish the displayed amount. If the reserve quantity is less than the amount to be displayed, the remainder of the reserve interest will be displayed in full. In the aforementioned example, if only 200 shares of the original reserve interest remains, then the displayed quantity will be replenished by the final 200 shares, bringing the total displayed amount to 400 shares. In this way, Floor brokers and specialists will have the flexibility to replenish liquidity that is in keeping with the market need at the specific time and at that price point. Moreover, if Floor brokers and specialists are able to display liquidity

<sup>6</sup> The average size of quotes on the Exchange has declined from 2,146 shares to 1,231 shares in the period from November 2006 to August 2007. Average execution size has declined from 334 shares to 254 shares during the same period.

in keeping with the current trading characteristics of the security, then there is more incentive for them to use the reserve function and thus provide additional liquidity to the market.

The Exchange further believes that the reduction of the display requirement to use the reserve function will not adversely impact current quoted size. The Exchange understands that specialists have not been using reserves to any great extent and, thus, the reduction of the minimum display requirement will not have any impact on the displayed quotes representing specialist interest.

Lastly, the Exchange is not aware of any other domestic securities market that has a minimum display requirement for the use of its reserve function on the same scale as that currently required by the NYSE, yet many of these markets have sizeable displayed liquidity.<sup>7</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that the Exchange have rules that are 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>9</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>7</sup> For example, American Stock Exchange ("Amex") Rule 131(s)—AEMI (Types of Orders) defines a reserve order and allows the visible size of the reserve to be "\* \* \* not less than one lot \* \* \*". See also The NASDAQ Stock Market LLC ("Nasdaq") Rule 4751(e)(3) (defining "non-displayed order").

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78k-1(a)(1).

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because NYSE's proposed minimum display requirement for reserve orders is similar to the minimum display requirement of another exchange.<sup>14</sup> For these reasons, the Commission designates that the proposed rule change become operative on October 2, 2007, the date the Exchange filed Amendment No. 1.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> See Amex Rule 131(s)—AEMI. See also Nasdaq Rule 4751(e)(3).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>16</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-93 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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

<sup>16</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on October 2, 2007, the date on which the Exchange filed Amendment No. 1.

available publicly. All submissions should refer to File Number SR-NYSE-2007-93 and should be submitted on or before October 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E7-19908 Filed 10-9-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56607; File No. SR-NYSE-2007-91]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Waive the Fee Charged to Member Organizations for the Approval of Pre-Qualified Substitutes

October 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2007, the New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive for the remainder of 2007, with retroactive effect from September 1, 2007, the \$5,000 fee payable by a member organization in connection with the approval of a pre-qualified substitute employee. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to waive for the remainder of 2007, with retroactive effect from September 1, 2007, the \$5,000 fee payable by a member organization in connection with the approval of a pre-qualified substitute employee.<sup>3</sup> A pre-qualified substitute employee is an employee of a member organization who has been approved to work on the Exchange trading floor and can be assigned to work on the trading floor at any time that the member organization has a trading license available for use.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the

<sup>3</sup> The fee will continue to be in effect for approval of new members. Telephone conversation between John Carey, Assistant General Counsel, NYSE, and Nathan Saunders, Special Counsel, Division of Market Regulation, Exchange, on October 3, 2007.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-91 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at

the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-91 and should be submitted on or before October 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7-19911 Filed 10-9-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56601; File No. SR-NYSEArca-2007-79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Trade Shares of Eight Funds of the ProShares Trust Based on International Indexes Pursuant to Unlisted Trading Privileges

October 2, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2007, NYSE Arca, Inc. ("Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On September 28, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to trade pursuant to unlisted trading privileges ("UTP") shares ("Shares") of eight funds ("Funds") of

the ProShares Trust ("Trust") based on four international equity indexes. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to trade the Shares of the Funds pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3).<sup>3</sup> The Commission has approved the original listing and trading of the Shares on the American Stock Exchange LLC ("Amex").<sup>4</sup>

The Funds are designated as Short Funds ("Short Funds") and UltraShort Funds ("UltraShort Funds"), as described more fully below.<sup>5</sup> Each of the

<sup>3</sup> In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for Investment Company Units ("ICUs"). See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29). In July 2001, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14). The definition of an ICU is set forth in NYSE Arca Equities Rule 5.1(b)(15), which provides that an ICU is a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

<sup>4</sup> See Securities Exchange Act Release No. 56592 (October 1, 2007) (SR-Amex-2007-60) ("Amex Order"). See also Securities Exchange Act Release No. 56223 (August 8, 2007), 72 FR 45837 (August 15, 2007) (SR-Amex-2007-60) ("Amex Notice").

<sup>5</sup> The Commission has previously approved trading certain Ultra Funds, Short Funds, and UltraShort Funds of the ProShares Trust on the Exchange pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No. 34-55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR-NYSEArca-2006-87). See also Securities Exchange Act Release No. 54026

Continued

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Funds will have a distinct investment objective. Each Fund will attempt, on a daily basis, to achieve its investment objective by corresponding to a specified multiple of the inverse performance of a particular equity securities index (each, an "Underlying Index" or "Index") as briefly described below.

**Short Funds.** The Short Funds seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (–100%) of the Underlying Indexes. If a Short Fund is successful in meeting its objective, the net asset value ("NAV")<sup>6</sup> of the corresponding Shares should increase approximately as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when prices in the Index rise on a given day. The Short Funds include: (1) Short MSCI Emerging Markets ProShares, (2) Short MSCI Japan ProShares, (3) Short MSCI EAFE ProShares, and (4) Short FTSE/Xinhua China 25 ProShares.

**UltraShort Funds.** UltraShort Funds seek daily investment results, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (–200%) of the Underlying Indexes. If an UltraShort Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately twice as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when such prices rise on a given day. The UltraShort Funds include: (1) UltraShort MSCI Emerging Markets ProShares, (2) UltraShort MSCI Japan ProShares, (3) UltraShort MSCI EAFE ProShares, and (4) UltraShort FTSE/Xinhua China 25 ProShares.

No Fund will invest directly in the component securities of the relevant Underlying Index; instead, each Fund will create short exposure to the corresponding Index. Each Fund will establish positions in Financial Instruments (as defined below) that provide, on a daily basis, the inverse or opposite of, or twice the inverse or

opposite of, the performance of the relevant Underlying Index. Normally 100% of the value of the portfolios of each Fund will be devoted to such Financial Instruments and certain money market instruments.

The Financial Instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors, as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements ("Financial Instruments"). Money market instruments include certain U.S. government securities and repurchase agreements.

Availability of Information About the Shares and the Underlying Indexes

The Trust's Web site, which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (1) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and/or product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund will inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

According to the Amex Proposal, Amex will disseminate for each Fund on a daily basis by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value ("IIV"), recent NAV, shares outstanding, estimated cash amount, and total cash amount per Creation Unit. Amex will make available on its Web site daily trading volume, closing price, the NAV, and the final dividend amounts to be paid for each Fund. Amex represented in the Amex Proposal that it will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per share for each Fund will be calculated daily and made available to all market participants at the same time.<sup>7</sup>

<sup>7</sup> If Amex halts trading in the Shares of the Funds because the NAV is not being disseminated to all

Each Fund's total portfolio composition will be disclosed on the Trust's Web site (<http://www.proshares.com>) or another relevant Web site as determined by the Trust and/or Amex. According to the Amex Proposal, the Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents, and the amount of cash held in the portfolio of each Fund. This public disclosure of the portfolio composition of each Fund will coincide with the disclosure by ProShare Advisors LLC ("Advisor") of the "IIV File" and the "PCF."<sup>8</sup> Therefore, the portfolio information (including accrued expenses and dividends) to be provided on the public Web site will be the same as the information in the IIV File and PCF (when applicable) provided to authorized participants. The format of the public Web site disclosure and the IIV File and PCF (when applicable) will differ because the public Web site will list all portfolio holdings while the IIV and PCF (when applicable) will similarly provide the portfolio holdings but in a format appropriate for authorized participants, *i.e.*, the exact components of a Creation Unit.<sup>9</sup> Each investor will have access to the current portfolio composition of each Fund through the Trust's Web site, at <http://www.proshares.com>, and/or at the Amex's Web site at <http://www.amex.com>.

Beneficial owners of Shares ("Beneficial Owners") will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual Fund reports, written statements

market participants at the same time, then the Exchange would do so as well.

<sup>8</sup> According to the Amex Proposal, the Trust will create a portfolio composition file ("PCF") for each Fund, which it will transmit to the National Securities Clearing Corporation ("NSCC") before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system. Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an "IIV File," which it will use to disclose the Funds' holdings of Financial Instruments. The IIV File will contain, for each Fund, information sufficient by itself or in connection with the PCF and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund. The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all authorized participants and Amex will have access to a password and the Web site containing the IIV File.

<sup>9</sup> The composition will be used to calculate the NAV later that day.

(June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115).

<sup>6</sup> NAV per Share of each Fund is computed by dividing the value of the net assets of such Fund (*i.e.*, the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV.

accompanying dividend payments, proxy statements, annual notifications detailing the tax status of Fund distributions, and Form 1099-DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, e.g., <http://www.bloomberg.com>. Data regarding each Underlying Index are also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only). The value of each Underlying Index would be updated intra-day as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated at least every 60 seconds from 9:30 a.m. to 4:15 p.m. Eastern Time by Amex or another organization authorized by the relevant Underlying Index provider.<sup>10</sup>

According to the Amex Proposal, in order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex will disseminate through the facilities of the CTA: (1) Continuously from 9:30 a.m. to 4:15 p.m. Eastern Time, the market value of a Share; and (2) at least every 15 seconds from 9:30 a.m. to 4:15 p.m. Eastern Time, the IIV as calculated by Amex (the "IIV Calculator"). Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator will calculate an IIV for each Fund in the manner discussed in the Amex Proposal. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per-Share basis disseminated from 9:30 a.m. to 4:15 p.m. Eastern Time should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by Amex is expected to be close to the most recently calculated

Fund NAV on a per-Share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

#### Trading Halts

The Exchange represents that it will cease trading the Shares of the Fund if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12. UTP trading in the Shares is also governed by the trading halts provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index.

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares could be halted pursuant to the Exchange's "circuit breaker" rule<sup>11</sup> or by the halt or suspension of trading of the underlying securities.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions).<sup>12</sup> The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

<sup>11</sup> See NYSE Arca Equities Rule 7.12.

<sup>12</sup> Because NSCC does not disseminate the new basket amount to market participants until approximately 6 p.m. to 7 p.m. Eastern Time, an updated IIV is not possible to calculate during the Exchange's late trading session (from 4:15 p.m. to 8 p.m. Eastern Time). Official index sponsors for the Underlying Indexes currently do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors do so in the future, the Exchange would not trade this product unless such official index value is widely disseminated.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.<sup>13</sup>

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares;<sup>14</sup> (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV is disseminated; (5) the requirement that

<sup>13</sup> A list of the current members and affiliate members of ISG is available at <http://www.isgportal.com>.

<sup>14</sup> NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

<sup>10</sup> During certain periods, the relevant Underlying Index value may be not updated or static.

ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the registration statement for the Fund.

The Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from Section 11(d)(1) of the Act<sup>15</sup> and certain rules under the Act, including Rule 10b-10, Rule 14e-5, Rule 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M under the Act.

The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>16</sup> in general, and with Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to 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 would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-79 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-79. 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-NYSEArca-2007-79 and should be submitted on or before October 31, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>19</sup> which

<sup>18</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

requires, among other things, that the rules of a national securities exchange be 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. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,<sup>20</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>21</sup> The Commission notes that it previously approved the listing and trading of the Shares on Amex.<sup>22</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>23</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>24</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. In addition, from 9:30 a.m. to 4:15 p.m. Eastern Time, Amex will disseminate via the facilities of the CTA the IIV at

<sup>20</sup> 15 U.S.C. 78l(f).

<sup>21</sup> Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>22</sup> See *supra* note 4.

<sup>23</sup> 17 CFR 240.12f-5.

<sup>24</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>15</sup> 15 U.S.C. 78k(d)(1).

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

least every 15 seconds, the market value of a Share for each Fund, the most recent NAV for each Fund, the number of Shares outstanding for each Fund, and the estimated cash amount and total cash amount per Creation Unit. Amex will also make available on its Web site daily trading volume, the closing prices, the NAV, and the final dividend amounts to be paid for each Fund.

Furthermore, the value of each Underlying Index will be updated intraday as its individual component securities change in price and disseminated at least every 60 seconds from 9:30 a.m. to 4:15 p.m. Eastern Time by Amex or another organization authorized by the relevant Underlying Index provider. The Trust's Web site will contain a variety of other quantitative information for the Shares of each Fund. Finally, each Fund's total portfolio composition will be disclosed on the Web site of the Trust or another relevant Web site as determined by the Trust and/or Amex.

Furthermore, the Commission believes that the proposal is reasonably designed to preclude trading of the Shares when transparency is impaired. Trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which provides that, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange also would halt trading. The Exchange also may halt trading in the Shares of a Fund when trading is not occurring in the securities comprising an Underlying Index and/or the Financial Instruments of a Fund.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. In particular, the Information Bulletin will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof. The Information Bulletin would also discuss the risks involved in trading the Shares

during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated.

3. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-NYSEArca-2007-79), as amended, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7-19909 Filed 10-9-07; 8:45 am]

**BILLING CODE 8011-01-P**

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages included in this notice are for new information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information;

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or emailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

(SSA), Social Security Administration, DCBPM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail address: [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by e-mailing [OPLM.RCO@ssa.gov](mailto:OPLM.RCO@ssa.gov).

1. Authorization for SSA to Disclose Tax Information for Your Appeal of Your Medicare Part B Income-Related Monthly Adjustment Premium Amount—20 CFR 418.1350-NEW. Medicare Part B beneficiaries who wish to appeal SSA's reconsideration of their Income-Related Monthly Adjustment Amount (IRMAA) must ensure that the relevant Internal Revenue Service (IRS) income tax data is made available to the Health and Human Services Administrative Law Judge (ALJ) who will consider their appeal. Currently, SSA is using IRS Form-8821 to obtain beneficiary authorization to disclose the IRS beneficiary tax data to the ALJ. With IRS's concurrence, SSA has developed its own form for this purpose, the SSA-54. The respondents are Medicare Part B recipients who want to appeal SSA's reconsideration of their IRMAA amount.

*Type of Request:* Revision to an existing OMB-approved information collection.

*Type of Request:* New information collection.

*Number of Respondents:* 6,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 1,500 hours.

2. Race & Ethnicity Qualitative Research—0960-NEW. Collection

Background. Currently, SSA has no reliable, statistically valid means of capturing race/ethnicity data in our core business process. While some Race/Ethnicity data is collected by Form SS-5, the Application for Social Security Card, it is not provided to SSA through other means of enumerating individuals; e.g., the Enumeration at Birth and Enumeration at Entry processes. Additionally, it is not collected during the disability application process. We believe that adding race/ethnicity as questions to SSA's applications for benefits will enable SSA to improve its administrative data. Consequently, we intend to collect this information in other SSA application processes. OMB mandated that Federal agencies collecting race and ethnicity information must use consistent standards established by OMB. We will follow the OMB standards when collecting our Race/Ethnicity data.

#### Race & Ethnicity Qualitative Research

Before SSA collects Race/Ethnicity data, we plan to conduct several voluntary focus groups with members of the public to assess their opinions, reactions and recommendations on a proposed form that will be used to collect the information. The questions and race and ethnicity categories will follow the standards developed by OMB. The information from this research will be used to develop a comprehensive collection form. The respondents are members of the public who volunteer to participate in the Race/Ethnicity questions focus groups.

**Note:** Please note that this **Federal Register** Notice is only for the Race and Ethnicity Quality Research focus groups. We will post a separate **Federal Register** Notice in the future for the actual Race and Ethnicity information collection.

*Type of Request:* New information collection.

*Number of Respondents:* 96 (8 focus groups, 12 participants).

*Frequency of Response:* 1.

*Average Burden per Response:* 90 minutes.

*Estimated Annual Burden:* 144 hours.

Dated: October 3, 2007.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. E7-19876 Filed 10-9-07; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF STATE

[Public Notice 5954]

### Determination and Certification Under Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109-102), as Carried Forward by the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110-5)

Pursuant to the authority vested in me as Secretary of State, including under section 559E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109-102), as carried forward by the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110-5), I hereby determine and certify that:

(1) Assistance for the fiscal year will be provided only for individuals who have (A) verifiably renounced and terminated any affiliation or involvement with FTOs or other illegal armed groups; and (B) are meeting all the requirements of the Colombian Demobilization Program, including having disclosed their involvement in past crimes and their knowledge of the FTO's structure, financing sources, illegal assets, and the location of kidnapping victims and bodies of the disappeared;

(2) the Government of Colombia is providing full cooperation to the Government of the United States to extradite the leaders and members of the FTOs who have been indicted in the United States for murder, kidnapping, narcotics trafficking, and other violations of United States law;

(3) the Government of Colombia is implementing a concrete and workable framework for dismantling the organizational structures of foreign terrorist organizations; and

(4) funds shall not be made available as cash payments to individuals and are available only for activities under the following categories: Verification, reintegration (including training and education), vetting, recovery of assets for reparations for victims, and investigations and prosecutions.

This Determination shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Dated: September 28, 2007.

**Condoleezza Rice,**

*Secretary of State, Department of State.*

[FR Doc. E7-19955 Filed 10-9-07; 8:45 am]

BILLING CODE 4710-29-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Notice of Request for Renewal of a Previously Approved Collection

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the U.S. Department of Transportation's (DOT) intention to request an extension of the information collection request (ICR) OMB No. 2105-0552, Reports by Carriers on Incidents Involving Animals During Air Transport. The current information collection request approved by OMB expires on March 31, 2008.

**DATES:** Comments on this notice must be received by December 10, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web site:* <http://www.regulations.gov>.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.
- *Hand Delivery:* West Building, Ground Floor, Rm. W-12-140, 1200 New Jersey Ave., SE., Washington, DC 20590-0001 (between 9 a.m. and 5 p.m. EST, Monday through Friday, except on Federal holidays).

*Instructions:* All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or West Building, Ground Floor, Rm. W-12-140, 1200 New Jersey Ave., SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas Goodman or Blane Workie, Office of the General Counsel, U.S. Department of Transportation, W-96-422, 1200 New Jersey Ave., SE., Washington, DC 20590-0001, (202) 366-0205. Refer to OMB Control Number 2105-0552.

#### SUPPLEMENTARY INFORMATION:

*Title:* Reports by Carriers on Incidents Involving Animals During Air Transport.

*OMB Control Number:* 2105-0552.

*Type of Request:* Extension without change of a previously approved collection.

*Abstract:* The requested extension of the approved control number covers the information collection request (ICR) OMB No. 2105-0552, "Reports by Carriers on Incidents Involving Animals During Air Transport," which the Department of Transportation codified at 14 CFR 234.13. Section 234.13, which implements Section 710 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) [i.e., Public Law 106-810], requires U.S. air carriers that provide scheduled service to submit a monthly report on any incidents involving the loss, injury or death of an animal during air transport to the Department's Aviation Consumer Protection Division (ACPD). "Animal" is defined in the rule as any warm- or cold-blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States. The information gathered from the airline reports is published in DOT's Air Travel Consumer Report to provide the public with a valuable tool to use in choosing which air carrier to travel with when traveling with a pet.

*Respondents:* Air carriers that transport pets.

*Estimated Number of Respondents:* 30.

*Estimated Total Burden on Respondents:* 360 hours (Respondents (30) × Frequency (12 per year)).

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on October 2, 2007.

**Samuel Podberesky,**

*Assistant General Counsel for Aviation Enforcement & Proceedings, U.S. Department of Transportation.*

[FR Doc. E7-19916 Filed 10-9-07; 8:45 am]

**BILLING CODE 4910-62-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed the Week Ending September 28, 2007

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2007-29363.

*Date Filed:* September 27, 2007.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC3 Within South Asia Subcontinent (PTC3 1115), Special Passenger Amending Resolution, between Sri Lanka and India.

*Intended Effective Date:* 15 October 2007.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E7-19956 Filed 10-9-07; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 28, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST-2007-29368.

*Date Filed:* September 27, 2007.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 18, 2007.

*Description:* Application of Pan American World Airways Dominicana, C. por A., d/b/a PAWA Dominicana

("PAWA Dominicana") requesting issuance of a foreign air carrier permit authorizing PAWA Dominicana, to provide scheduled and charter foreign air transportation carrying persons, property and mail between Santo Domingo and other points in the Dominican Republic, on the one hand, and San Juan, Puerto Rico, and other points in Puerto Rico, on the other hand.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E7-19954 Filed 10-9-07; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-88 (Sub-No. 12X)]

#### Bessemer and Lake Erie Railroad Company—Abandonment Exemption— in Butler County, PA

On September 19, 2007, Bessemer and Lake Erie Railroad Company (B&LE) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903<sup>1</sup> to abandon a 3.67-mile line of railroad, between milepost 0.00 and milepost 3.67, in Branchton, Butler County, PA. The line traverses United States Postal Service Zip Codes 16020 and 16021, and includes the stations of Branchton Yard (milepost 0.00), Bovard (milepost 0.98), Nelsons (milepost 2.78) and Osbornes (milepost 3.62).

The line does not contain federally granted rights-of-way. Any documentation in B&LE's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 7, 2008.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,300 filing fee. See 49 CFR 1002.2(f)(25).

<sup>1</sup> Originally, B&LE also sought exemption from the Offer of Financial Assistance provisions of section 10904 and the Public Use provisions of section 10905. However, by facsimile filed on October 3, 2007, B&LE modified its filing to seek exemption from only section 10903.

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 29, 2007. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-88 (Sub-No. 12X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; and (2) Thomas J. Healey, 17641 S. Ashland Ave., Homewood, IL 60430-

1345. Replies to the petition are due on or before October 29, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245-0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who

commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Decided: October 3, 2007.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E7-19868 Filed 10-9-07; 8:45 am]

**BILLING CODE 4915-01-P**



# Federal Register

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**Wednesday,  
October 10, 2007**

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## **Part II**

### **Department of Health and Human Services**

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**Centers for Medicare & Medicaid Services**

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**42 CFR Parts 411, 412, 413, and 489  
Medicare Program; Changes to the  
Hospital Inpatient Prospective Payment  
Systems and Fiscal Year 2008 Rates;  
Correction; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 411, 412, 413, and 489**

[CMS-1533-CN2]

RIN 0938-A070

**Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates; Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule with comment period.

**SUMMARY:** This document corrects technical errors that appeared in the final rule with comment period entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates" that appeared in the August 22, 2007 *Federal Register*.

**DATES:** This correction is effective October 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Eric Ruiz, (410) 786-0247.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 07-3820 of August 22, 2007 (72 FR 47130), there were a number of technical errors that are identified and corrected in the Correction of Errors section of this notice. We issued the fiscal year (FY) 2008 hospital inpatient prospective payment systems (IPPS) final rule with comment period on August 1, 2007. The FY 2008 IPPS final rule with comment period appeared in the August 22, 2007 *Federal Register*.

**II. Summary of Errors**

We recently discovered that an inadvertent technical error was made in the calculation of hospital specific rates for sole community hospitals (SCHs) and Medicare-dependent hospitals (MDHs). Although we did not publish these hospital specific rates in the FY 2008 IPPS final rule, hospital specific rates affect our calculation of budget neutrality factors for DRG recalibration, the wage index, geographic reclassification, and the rural floor. Accordingly, we have recalculated these budget neutrality factors. Because we recalculated these budget neutrality factors, we also recalculated the standardized amounts and outlier threshold. These changes decreased the standardized amounts slightly and reduce the final FY 2008 outlier threshold by \$175. In addition, we are correcting unintentional technical errors in the geographic classification or reclassification for several providers. Therefore, in this notice we are making the following corrections:

- Outlier threshold.
- Recalibration, wage and recalibration, geographic reclassification, and rural floor budget neutrality factors.
- Tables 1A through 1D, 2, 4A, 4C, 4J, 9A, 9C, and 10.
- Impact analysis tables (Tables I, II, III, and IV).

In addition, we have posted these corrected tables on our Web site at <http://www.cms.hhs.gov/AcuteInpatientPPS/WIFN/list.asp>.

This notice also corrects other technical and typographical errors including the following:

- Date that mediastinitis will be listed on the major complication or comorbidity (MCC) list.
- Tables 5 and 11.

**DRGS SUBJECT TO FINAL POLICY**

MDC	MS-DRG	Narrative description of DRG
5 .....	245	AICD Lead & Generator Procedures (this is a new DRG, with procedures moved from CMS DRG 551, Permanent Cardiac Pacemaker Implant with Major Cardiovascular Diagnosis or AICD Lead or Generator).

8. On page 47387, 3rd column, 1st partial paragraph, line 9, after the phrase "outpatient visit." is corrected by adding a sentence to read as follows: "In § 489.20(u), we also added language to specify that § 482.13(b)(2) pertains to the right of the patient to make informed decision regarding his or her care."

9. On page 47388, 2nd column, 3rd full paragraph, line 8, the phrase

"would condition consumers" access to" is corrected to read "would condition consumers' access to".

10. On page 47391,

a. Third column, 1st full paragraph, line 28 after the phrase "regulatory text we originally proposed." is corrected by adding a sentence to read as follows: "In § 489.20(v), we also added language to specify that § 482.13(b)(2) pertains to

**III. Correction of Errors**

In FR Doc. 07-3820 of August 22, 2007 (72 FR 47130), make the following corrections:

*A. Corrections to the Preamble*

1. On page 47142, 3rd column, 2nd full paragraph, lines 1 and 2, the phrase "Division of Acute Care, Center for Medicaid Management" is corrected to read "Division of Acute Care, Center for Medicare Management."

2. On page 47162, 1st column, 2nd full paragraph, lines 6 and 7, the sentence "The MS DRGs have 3,342 codes on the MCC list and 4,922 codes on the CC list." is corrected to read "The MS-DRGs have 1584 codes on the MCC list and 3343 codes on the CC list".

3. On page 47186, 3rd column, 1st partial paragraph, line 20, the figure "\$22,650" is corrected to read "\$22,460".

4. On page 47207, 3rd column, last paragraph, lines 4 through 6, the phrase, "injection, transfusion, and vaccination (ventilator-associated pneumonia is also included here)." is corrected to read "injection, transfusion, and vaccination".

5. On page 47208, 2nd column, 1st full paragraph, lines 4 through 6, the phrase "injection, transfusion, and vaccination (ventilator-associated pneumonia is also indexed here)." is corrected to read "injection, transfusion, and vaccination."

6. On page 47213, 2nd column, 3rd full paragraph, line 14, the date "October 1, 2009" is corrected to read "October 1, 2008."

7. On page 47251, top of the page, the table "DRGs Subject to Final Policy", after line 31 (MDC 5, MS-DRG 242, 243, and 244) is corrected by adding the following entry:

the right of the patient to make informed decision regarding his or her care."

*B. Corrections to the Regulations Text*

**§ 412.2 [Corrected]**

■ 1. On page 47410, 1st column, 2nd paragraph, the section heading "§ 412.2 Basis for payment." is corrected to read "§ 412.2 Basis of payment."

C. Corrections to the Addendum

- 1. On page 47416,
  - a. First column,
    - (1) Second full paragraph,
      - (a) Line 15, the figure “0.996563” is corrected to read “0.996383.”
      - (b) Line 21, the figure “0.995913.” is corrected to read “0.995743.”
      - (c) Line 31, the figure “0.995913” is corrected to read “0.995743.”
    - b. Second column, 1st full paragraph, line 29, the figure “0.991695” is corrected to read “0.991290”.
    - c. Third column, 1st partial paragraph, line 5, the figure “0.999318” is corrected to read “0.999265.”

- 2. On page 47419,
  - a. First column, 1st partial paragraph, line 4, the figure “\$22,635.” is corrected to read “\$22,460.”
  - b. Third column,
    - (1) First full paragraph, line 15, the figure “4.83” is corrected to read “4.87”.
    - (2) Third full paragraph, after line 7, the figures in the table are corrected to read as follows:

	Operating standardized amounts	Capital federal rate
National .....	0.949015	0.951251
Puerto Rico	0.964149	0.958732

- 3. On page 47420, 3rd column, 1st partial paragraph, last line, the figure “0.999903.” is corrected to read “0.999902”.
- 4. On page 47421, bottom half of the page, in the table Comparison of FY 2007 Standardized Amounts to the FY 2008 Single Standardized Amount with Full Update and Reduced Update, the figures in the listed entries are corrected to read as follows:

COMPARISON OF FY 2007 STANDARDIZED AMOUNTS TO THE FY 2008 SINGLE STANDARDIZED AMOUNT WITH FULL UPDATE AND REDUCED UPDATE

	Full update (3.3 percent); wage index is greater than 1.0000	Full update (3.3 percent); wage index is less than 1.0000	Reduced update (1.3 percent); wage index is greater than 1.0000	Reduced update (1.3 percent); wage index is less than 1.0000
FY 2007 Base Rate, after removing reclassification budget neutrality, demonstration budget neutrality, wage index transition budget neutrality factors and outlier offset (based on the labor and market share percentage for FY 2008).	Labor: \$3,609.23 ..... Nonlabor: \$1,569.01 .....	Labor: \$3,609.23 ..... Nonlabor: \$1,569.01 .....	Labor: \$3,609.23 ..... Nonlabor: \$1,569.01 .....	Labor: \$3,609.23. Nonlabor: \$1,569.01.
FY 2008 Update Factor .....	1.033 .....	1.033 .....	1.013 .....	1.013.
FY 2008 DRG Recalibrations and Wage Index Budget Neutrality Factor.	0.996383 .....	0.996383 .....	0.996563 .....	0.996563.
FY 2008 Reclassification Budget Neutrality Factor.	0.991290 .....	0.991290 .....	0.991290 .....	0.991290.
Adjusted for Blend of FY 2007 DRG Recalibration and Wage Index Budget Neutrality Factors.	Labor: \$3,682.49 ..... Nonlabor: \$1,600.86 .....	Labor: \$3,275.68 ..... Nonlabor: \$2,007.67 .....	Labor: \$3,611.20 ..... Nonlabor: \$1,569.86 .....	Labor: \$3,212.26. Nonlabor: \$1,968.80.
Imputed Rural Floor Budget Neutrality Factor.	0.999265 .....	0.999265 .....	0.999265 .....	0.999265.
FY 2008 Outlier Factor .....	0.949015 .....	0.949015 .....	0.949015 .....	0.949015.
Rural Demonstration Budget Neutrality Factor.	0.999902 .....	0.999902 .....	0.999902 .....	0.999902.
FY 2008 Documentation and Coding Adjustment.	0.988 .....	0.988 .....	0.988 .....	0.988.
Rural Floor Adjustment .....	1.002214 .....	1.002214 .....	1.002214 .....	1.002214.
Rate for FY 2008 .....	Labor: \$3,457.57 ..... Nonlabor: \$1,503.07 .....	Labor: \$3,075.60 ..... Nonlabor: \$1,885.04 .....	Labor: \$3,390.63 ..... Nonlabor: \$1,473.97 .....	Labor: \$3,016.05. Nonlabor: \$1,848.55.

- 5. On page 47423, 1st column, 3rd full paragraph, line 14, the figure “0.983962.” is corrected to read “0.983794.”
- 6. On page 47424, 3rd column, 2nd full paragraph, last line, the figure “0.86” is corrected to read “0.91”.
- 7. On page 47428,
  - a. First column,
    - (1) First full paragraph,
      - (a) Line 13, the figure “4.83” is corrected to read “4.87”.
      - (b) Line 16, the figure “0.9517” is corrected to read “0.9513.”
    - (2) Second full paragraph,

- (a) Lines 5 and 6, the phrase, “0.9517 is a -0.53 percent” is corrected to read “0.9513 is -0.57 percent”.
- (b) Lines 10 and 11, the figures “0.9947(0.9517/0.9568).” are corrected to read “0.9943(0.9513/0.9568).”
- (c) Line 13, the figure “0.53” is corrected to read “0.57”.
- b. Third column,
  - (1) First full paragraph,
    - (a) Line 9, the phrase “FY 2008 relative weights” is corrected to read, “FY 2007 relative weights”.
    - (b) Line 22, the figure “1.0018” is corrected to read “1.0017”.

- (c) Line 25, the phrase “adjustment of 0.9924” is corrected to read “adjustment of 0.9923”.
- (2) Second full paragraph,
  - (a) Line 4, the date “FY 2007 GAF” is corrected to read “FY 2008 GAF”.
  - (b) Line 15, the figure “0.9903” is corrected to read “0.9902.”
- 8. On page 47429, in the table Budget Neutrality Adjustment for DRG Reclassifications and Recalibration and the Geographic Adjustment Factors, the listed entry is corrected to read as follows:

Fiscal year	National			
	Incremental adjustment			Cumulative
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined	
2008 .....	1.00172	0.99792	0.99963	0.99021

- 9. On page 47430, 1st column, 2nd full paragraph,
  - (1) Line 8, the figure “0.9997.” is corrected to read “0.9996.”
  - (2) Line 20, the figure “0.9997.” is corrected to read “0.9996.”
  - (3) Line 22, the figure “0.9903” is corrected to read “0.9902.”
- 10. On page 47431,
  - a. Second column,

- (2) Second full paragraph, line 6, the figure “0.9997.” is corrected to read “0.9996.”
- (3) Third full paragraph, line 2, the figure “0.9517.” is corrected to read “0.9513.”
- b. Third column,
  - (1) First paragraph,
    - (a) Line 10, the figure “0.03” is corrected to read, “0.04”.

- (b) Line 13, the figure “0.53” is corrected to read, “0.57”.
- (c) Lines 33, the figure “0.86” is corrected to read, “0.91”.
- c. Bottom half of the page, the table Comparison of Factors and Adjustments: FY 2007 Capital Federal Rate and FY 2008 Capital Federal Rate, the table and footnotes are corrected to read as follows:

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2007 CAPITAL FEDERAL RATE AND FY 2008 CAPITAL FEDERAL RATE

	FY 2007	FY 2008 <sup>4</sup>	Change	Percent change <sup>5</sup>
Update Factor <sup>1</sup> .....	1.0110	1.0090	1.0090	0.00
GAF/DRG Adjustment Factor <sup>1</sup> .....	0.9986	0.9996	0.9996	-0.04
Outlier Adjustment Factor <sup>2</sup> .....	0.9568	0.9513	0.9943	-0.57
Exceptions Adjustment Factor <sup>2</sup> .....	0.9997	0.9997	1.0000	0.00
MS-DRG Upcoding Adjustment Factor <sup>3</sup> .....	.....	0.9880	0.9880	-1.20
Capital Federal Rate .....	\$427.03	\$423.13	0.9909	-0.91

<sup>1</sup> The update factor and the GAF/DRG budget neutrality factors are built permanently into the capital rates. Thus, for example, the incremental change from FY 2007 to FY 2008 resulting from the application of the 0.9996 GAF/DRG budget neutrality factor for FY 2008 is 0.9996.  
<sup>2</sup> The outlier reduction factor and the exceptions adjustment factor are not built permanently into the capital rates; that is, these factors are not applied cumulatively in determining the capital rates. Thus, for example, the net change resulting from the application of the FY 2008 outlier adjustment factor is 0.9513/0.9568, or 0.9943.  
<sup>3</sup> Adjustment to FY 2008 IPPS rates to account for upcoding expected to result from the adoption of the MS-DRGs, as discussed above in section III. of the Addendum to this final rule with comment period.  
<sup>4</sup> Factors for FY 2008, as discussed above in section III. of the Addendum to this final rule with comment period.  
<sup>5</sup> Percent change of individual factors may not sum due to rounding.

- 11. On page 47432,
  - a. Top of the page, the table Comparison of Factors and

Adjustments: Proposed FY 2008 Capital Federal Rate and Final FY 2008 Capital Federal Rate, the table is corrected to read as follows:

COMPARISON OF FACTORS AND ADJUSTMENTS: PROPOSED FY 2008 CAPITAL FEDERAL RATE AND FINAL FY 2008 CAPITAL FEDERAL RATE

	Proposed FY 2008 for rural hospitals	Proposed FY 2008 for urban hospitals	Final FY 2008 for all hospitals*	Percent change for rural hospitals**	Percent change for urban hospitals**
Update Factor .....	1.0080	1.0000	1.0090	0.10	0.90
GAF/DRG Adjustment Factor .....	1.0018	1.0018	0.9996	-0.22	-0.22
Outlier Adjustment Factor .....	0.9484	0.9484	0.9513	0.31	0.31
Exceptions Adjustment Factor .....	0.9997	0.9997	0.9997	0.00	0.00
MS-DRG Upcoding Adjustment Factor .....	0.9760	0.9760	0.9880	1.23	1.23
Capital Federal Rate .....	\$417.26	\$413.87	\$423.13	1.41	2.24

- b. Second column, 2nd full paragraph, line 10, the figure “\$199.80.” is corrected to read “\$200.32.”

- c. Third column, 4th full paragraph, line 16, the figure “\$22,635.” is corrected to read “\$22,460.”
- 12. On page 47435,
  - a. In Table 1A.—National Adjusted Operating Standardized Amounts,

Labor/Nonlabor (69.7 Percent Labor Share/30.3 Percent Nonlabor Share if Wage Index Greater Than 1), the table is corrected to read as follows:

**TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS; LABOR/NONLABOR**  
 [(69.7 Percent labor share/30.3 percent nonlabor share if wage index greater than 1)]

Full update (3.3 percent)		Reduced update (1.3 percent)	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
\$3,457.57	\$1,503.07	\$3,390.63	\$1,473.97

■ b. In Table 1B.—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (62 Percent Labor Share/38 Percent Nonlabor Share if Wage Index Less Than or Equal to 1), the table is corrected to read as follows:

**TABLE 1B.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR**  
 [(62 Percent labor share/38 percent nonlabor share if wage index less than or equal to 1)]

Full update (3.3 percent)		Reduced update (1.3 percent)	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
\$3,075.60	\$1,885.04	\$3,016.05	\$1,848.55

■ c. In Table 1C.—Adjusted Operating Standardized Amounts for Puerto Rico Labor, Labor/Nonlabor, the table is corrected to read as follows:

**TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR**

	Rates if wage index greater than 1		Rates if wage index less than or equal to 1	
	Labor	Nonlabor	Labor	Nonlabor
National .....	\$3,457.57	\$1,503.07	\$3,075.60	\$1,885.04
Puerto Rico .....	1,453.58	890.90	1,376.21	968.27

■ d. In Table 1D.—Capital Standard Federal Payment Rate, the table is corrected to read as follows:

**TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE**

	Rate
National .....	\$423.13

**TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE—Continued**

	Rate
Puerto Rico .....	\$200.32

■ 13. On pages 47435 through 47496, in Table 2.—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal

Year 2006; Hospital Wage Indexes for Federal Fiscal Year 2008; Hospital Average Hourly Wages for Federal Fiscal Years 2006 (2002 Wage Data), 2007 (2003 Wage Data), and 2008 (2004 Wage Data); and 3-Year Average of Hospital Average Hourly Wages, the wage index for the listed provider numbers are corrected to read as follows:

**TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES**

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
010001 .....	1.5191	0.7567	21.6546	22.1989	23.2195	22.3615
010005 .....	1.1378	0.8690	22.4906	23.6022	23.0203	23.0415
010006 .....	1.5126	0.7693	23.4823	23.4975	23.7502	23.5724
010007 .....	1.0207	0.7567	18.2429	19.9329	21.3492	19.8699
010008 .....	1.0417	0.7741	20.4591	17.9533	22.0793	19.9268
010009 .....	0.9702	0.8725	23.2228	23.5626	25.9011	24.2272
010010 .....	1.1043	0.8690	21.4974	27.0385	22.8602	23.5943
010011 .....	1.6748	0.8856	27.4850	27.6658	27.4668	27.5393
010012 .....	1.2356	0.9388	22.7020	24.4059	25.5767	24.1956
010015 .....	1.0427	0.7613	21.5111	22.3383	27.0806	23.3440
010016 .....	1.5770	0.8856	25.1502	24.6488	26.8611	25.5444
010018 .....	1.7123	0.8856	22.2990	23.7048	24.8974	23.6077
010019 .....	1.2722	0.7693	22.0906	22.8766	23.3460	22.7785
010021 .....	1.1851	0.7567	18.6785	19.7367	21.0624	19.7975

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
010022	0.9498	0.9813	24.5671	25.8404	27.4318	25.9300
010023	1.8506	0.8112	27.6174	25.4272	26.1739	26.4108
010024	1.6018	0.8112	20.7265	22.0819	25.0715	22.5306
010025	1.3028	0.8588	21.2674	22.7635	23.6186	22.5541
010027	0.7634	0.7567	15.3705	16.4682	17.0513	16.2718
010029	1.5710	0.8588	22.6976	23.9007	25.0468	23.9133
010032	0.9313	0.7892	19.1555	19.3311	18.5545	19.0122
010033	2.0854	0.8856	26.3784	27.4181	29.1471	27.6506
010034	1.0453	0.8112	16.9686	17.7457	19.1549	17.9513
010035	1.3134	0.8690	22.2870	24.2425	24.2746	23.6062
010036	1.1619	0.7567	22.9747	21.5796	24.2887	22.9479
010038	1.2689	0.8023	21.4509	23.7039	27.0752	24.1209
010039	1.6606	0.9018	25.8820	26.9919	28.6462	27.1994
010040	1.6563	0.8144	22.8851	24.3207	24.7657	23.9967
010043	1.0807	0.8856	22.5944	21.9774	23.9121	22.8205
010044	1.0847	0.8690	21.4036	22.5009	24.4276	22.7205
010045	1.2233	0.8690	19.8803	20.4927	23.1695	21.0755
010046	1.5335	0.8144	21.6965	23.4219	25.9105	23.5410
010047	0.8960	0.7694	21.0605	26.4851	19.7542	21.9502
010049	1.1433	0.7567	20.2413	21.7888	22.4248	21.5072
010050	1.0408	0.8856	22.1584	22.9620	24.4060	23.1658
010051	0.8299	0.8531	15.2207	18.7701	18.0305	17.3881
010052	0.8767	0.7670	16.4958	25.9233	36.3638	26.9159
010053	***	*	19.0108	*	*	19.0108
010054	1.0736	0.8725	22.5554	23.3624	24.4810	23.4780
010055	1.6124	0.7567	22.3800	22.5396	22.4145	22.4451
010056	1.6378	0.8856	23.7144	23.7398	24.5754	24.0311
010058	1.0119	0.8856	18.5538	19.5092	17.0150	18.2415
010059	1.0245	0.8725	21.3237	23.0012	24.8199	23.0577
010061	0.9828	0.8109	21.9370	24.1185	25.2454	23.7791
010062	1.0225	0.7567	18.3435	21.4805	21.7112	20.4976
010064	1.6963	0.8856	26.1110	24.8155	27.6149	26.1441
010065	1.5265	0.8690	21.3785	23.0477	24.3346	22.9447
010066	0.8369	0.7567	17.6152	19.8692	25.4612	20.9377
010068	***	*	19.0789	22.7156	24.4145	22.0070
010069	1.0252	0.7567	21.3609	23.1243	23.6272	22.6667
010072	***	*	21.8169	24.4989	*	23.1419
010073	0.9793	0.7567	16.4168	18.3963	19.0046	17.9415
010078	1.6180	0.8023	21.6857	23.5279	24.3828	23.2230
010079	1.2228	0.9018	21.8199	22.7337	22.3034	22.2840
010083	1.1887	0.8123	22.3040	22.4279	24.0036	22.9553
010084	1.3254	0.8856	24.7127	26.3238	26.5079	25.8383
010085	1.3335	0.8725	24.4710	24.2609	23.6280	24.1072
010086	1.0994	0.7567	18.6081	22.2096	21.5584	20.7409
010087	1.9947	0.7948	22.5225	22.4318	24.8320	23.2268
010089	1.2932	0.8856	22.8448	25.0811	26.2628	24.6788
010090	1.7444	0.8540	23.6948	26.0494	26.3957	25.3396
010091	0.9568	0.7613	18.6912	23.1310	22.5272	21.3026
010092	1.5529	0.8531	24.4592	26.6796	26.9959	26.0279
010095	0.8468	0.8531	13.9326	16.5250	17.0024	15.8689
010097	0.7113	0.8112	16.7549	19.4511	19.2481	18.5000
010098	0.9805	*	14.3076	*	*	14.3076
010099	0.9660	0.7567	18.7910	20.8383	20.6736	20.0891
010100	1.6851	0.8123	21.2915	23.8919	25.1460	23.5431
010101	1.1060	0.8690	21.6593	24.2575	25.0974	23.6323
010102	0.9334	0.7567	21.0902	25.6158	26.9859	24.5977
010103	1.8910	0.8856	26.1163	27.8272	28.9636	27.5991
010104	1.8838	0.8856	24.7394	27.6471	28.3126	26.8465
010108	1.0938	0.8112	28.4624	24.6740	25.4325	26.1487
010109	0.9828	0.8018	21.6194	17.6733	21.0449	20.0231
010110	0.7586	0.7782	17.5957	26.0038	19.8738	20.8832
010112	0.9652	0.7567	16.8902	17.1833	20.4027	18.1182
010113	1.6646	0.7948	21.4121	22.3282	24.7170	22.7864
010114	1.3662	0.8856	22.3752	25.6152	25.7090	24.6272
010115	0.6881	*	21.7477	*	*	21.7477
010118	1.2151	0.8162	19.7673	21.4630	22.7191	21.2742
010120	0.9625	0.7567	20.9450	20.9019	22.1868	21.3553

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
010121	***	*	24.0867	*	*	24.0867
010125	1.0635	0.8043	18.4113	21.5123	22.8911	20.8639
010126	1.1765	0.8112	23.1381	23.9327	24.4957	23.8552
010128	0.8778	0.7613	21.4200	23.6647	24.9881	23.3836
010129	1.0394	0.7701	21.3555	22.1574	21.8502	21.7888
010130	1.0252	0.8856	23.2488	23.7528	24.5644	23.8767
010131	1.3963	0.9018	25.7837	26.4297	27.2707	26.5327
010137	1.2204	0.8856	24.7366	27.5782	28.5843	26.9190
010138	0.6023	0.7633	13.8476	16.7602	14.5551	15.1032
010139	1.5875	0.8856	25.3014	26.8726	28.1473	26.8270
010143	1.2118	0.8690	22.0215	26.2762	24.0674	24.0861
010144	1.6376	0.7948	20.8209	22.5133	22.3916	21.9338
010145	1.4727	0.8531	24.9531	24.5092	25.8293	25.1083
010146	1.0794	0.8023	20.8917	22.6586	22.6879	22.1063
010148	0.8692	0.7567	20.5589	23.9246	23.5714	22.6800
010149	1.2877	0.8112	26.5854	24.4805	25.4354	25.4861
010150	1.0284	0.8112	21.6377	23.6080	24.4098	23.2040
010152	1.2978	0.7948	22.6202	22.4075	23.7803	22.9411
010157	1.1357	0.7693	24.3559	23.3828	24.2206	23.9837
010158	1.1916	0.7832	24.3531	23.5533	25.5905	24.4669
010162	***	*	*	33.8777	*	33.8777
010163	***	*	*	*	34.0325	34.0325
010164	1.1737	0.7976	*	*	23.2447	23.2447
010165	***	*	*	*	28.8040	28.8040
010166	***	*	*	*	29.7256	29.7256
010167	1.4919	0.8856	*	*	*	*
010168	1.1249	0.9020	*	*	*	*
020001	1.7991	1.2084	32.8120	35.4232	36.5298	34.9510
020004	1.1287	*	32.0966	31.8004	*	31.9467
020006	1.3160	1.2084	36.0540	34.3752	37.0211	35.7758
020008	1.2411	1.2084	35.9236	36.1250	39.3432	37.1503
020012	1.3780	1.2084	31.8995	32.5975	33.9375	32.8391
020014	1.1294	1.2084	32.0894	29.4472	30.9722	30.8221
020017	1.9188	1.2084	33.5852	35.4119	35.8804	34.9149
020018	0.9273	1.9280	*	*	*	*
020019	0.8687	1.9280	*	*	*	*
020024	1.1780	1.2084	33.0644	29.5195	38.6934	33.4500
020026	1.4935	1.9280	*	*	*	*
020027	0.9341	1.9280	*	*	*	*
030001	1.5488	1.0111	29.9840	32.4791	33.4178	31.9042
030002	2.0931	1.0111	29.0519	30.2200	31.0818	30.0874
030006	1.6975	0.9417	25.8872	27.0599	27.7421	26.9373
030007	1.4495	1.1187	29.6174	31.1928	33.7213	31.5818
030009	***	*	22.3993	26.5408	*	23.8204
030010	1.4087	0.9417	24.8275	28.5684	30.6261	28.0431
030011	1.4962	0.9417	25.1361	28.1423	28.8203	27.4688
030012	1.3876	0.9961	26.3859	27.3895	29.1042	27.6846
030013	1.4744	1.0086	25.7050	27.0111	31.2815	28.0280
030014	1.5918	1.0111	25.6259	29.6582	29.8296	28.4308
030016	1.2374	1.0111	26.7003	29.1980	30.7896	28.9890
030017	2.0652	1.0111	26.2452	30.6007	34.4852	30.7776
030018	1.3205	1.0111	28.9476	29.4566	31.8056	30.0512
030019	1.3316	1.0111	27.3156	29.5921	30.1934	29.0814
030022	1.5703	1.0111	26.4404	30.5710	30.3746	29.2068
030023	1.7873	1.1552	33.8333	34.2142	35.8287	34.6826
030024	2.0639	1.0111	31.6658	31.9247	33.1797	32.2883
030027	0.9709	*	20.4032	*	*	20.4032
030030	1.5768	1.0111	30.2712	32.0994	34.4166	32.2546
030033	1.2960	1.1187	26.6531	28.7508	29.9383	28.4685
030036	1.4588	1.0111	30.3521	30.9834	33.0523	31.6117
030037	2.1478	1.0111	28.6453	31.2877	34.1079	31.4098
030038	1.6801	1.0111	29.5509	29.9314	31.7238	30.2225
030040	0.9098	*	24.8145	27.5322	*	26.1823
030043	1.2683	0.8856	24.7932	26.5834	27.3856	26.2806
030055	1.4591	0.9577	24.5202	27.1473	27.1621	26.3554
030060	1.0894	*	24.3523	24.8373	*	24.5964
030061	1.6799	1.0111	25.5529	28.0696	28.1337	27.3140

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
030062	1.2025	0.8855	23.8068	26.6880	28.9587	26.5838
030064	1.9657	0.9417	25.4922	28.3853	29.8226	28.0126
030065	1.5912	1.0111	27.1646	29.5883	31.0817	29.3880
030067	1.0582	0.9153	20.4376	20.7591	27.4497	22.9601
030068	1.1135	0.8855	20.8846	23.1394	23.8792	22.6625
030069	1.4256	0.9334	26.3518	30.2224	29.7802	28.7293
030071	0.8920	1.4401	*	*	*	*
030073	1.0393	1.4401	*	*	*	*
030074	0.8727	1.4401	*	*	*	*
030077	0.7686	1.4401	*	*	*	*
030078	0.9911	1.4401	*	*	*	*
030080	1.5497	0.9417	25.2077	27.1360	28.6568	27.0149
030083	1.4230	1.0111	27.5353	27.4983	33.5302	29.3979
030084	0.9008	1.4401	*	*	*	*
030085	1.5896	0.9417	24.5792	26.8364	28.1388	26.6166
030087	1.6937	1.0111	26.6594	29.5962	31.2331	29.4038
030088	1.3707	1.0111	26.6796	27.8604	29.9758	28.2309
030089	1.6397	1.0111	27.1835	28.9068	30.1591	28.8100
030092	1.4993	1.0111	27.3203	31.7512	30.6343	30.0167
030093	1.2962	1.0111	25.8955	26.4430	27.8821	26.8453
030094	1.4039	1.0111	29.5948	31.5422	33.4050	31.6120
030099	0.8736	0.8855	26.3236	27.1402	26.9227	26.8026
030100	2.0564	0.9417	29.0691	31.5628	34.7532	31.7816
030101	1.4424	1.1223	26.1927	27.8302	30.6764	28.3394
030102	2.3653	1.0111	29.0942	31.6285	33.6247	31.5058
030103	1.7635	1.0111	30.1994	31.7322	32.2833	31.3997
030105	2.2401	1.0111	31.3094	31.2970	32.7449	31.8780
030106	1.7527	1.0111	34.7221	32.9840	36.4667	34.9449
030107	1.9168	1.0111	*	35.6197	35.5386	35.5721
030108	2.0446	1.0111	*	*	29.9395	29.9395
030109	***	*	*	16.5906	*	16.5906
030110	1.6188	1.0111	*	31.4852	29.7949	30.5015
030111	1.0309	0.9417	*	*	33.3711	33.3711
030112	1.9762	1.0111	*	*	36.6601	36.6601
030113	0.8959	1.4401	*	*	*	*
030114	1.3883	0.9417	*	*	*	*
030115	1.3514	1.0111	*	*	*	*
030117	1.1079	0.9334	*	*	*	*
030118	1.0969	0.9961	*	*	*	*
030119	1.1665	1.0111	*	*	*	*
040001	1.0776	0.8872	23.7718	22.9327	22.9948	23.2132
040002	1.2042	0.7516	20.1384	21.2020	25.0000	22.0327
040004	1.7265	0.8872	25.0286	27.1741	28.1117	26.7791
040007	1.7562	0.8961	25.7142	40.1291	29.1941	31.6856
040010	1.4682	0.8872	23.0274	24.2315	26.5287	24.6226
040011	1.0455	0.7516	20.3970	21.0967	22.2431	21.2830
040014	1.3571	0.8725	25.3451	26.4777	28.9855	26.8514
040015	0.9961	0.7516	19.2831	20.4279	20.1061	19.9379
040016	1.7616	0.8961	22.1228	25.8056	26.5911	24.8386
040017	1.0969	0.8715	21.9875	21.9147	23.8768	22.5741
040018	1.0812	0.8053	23.6044	24.0026	25.6751	24.3852
040019	1.1088	0.8964	23.7328	23.8706	24.9113	24.1695
040020	1.5861	0.8964	21.6603	22.6497	23.9470	22.7542
040021	1.5370	0.8961	25.6917	25.4046	26.1853	25.7538
040022	1.5695	0.8872	25.4052	29.5000	27.9902	27.5948
040026	1.5090	0.9106	25.4072	27.7931	29.5299	27.6091
040027	1.4827	0.8620	21.1412	21.4252	23.8220	22.1274
040029	1.4947	0.8961	24.0704	24.8409	25.1479	24.6992
040036	1.6105	0.8961	26.3226	27.6234	29.7150	27.9675
040039	1.2755	0.8153	19.5998	21.2712	21.4819	20.7976
040041	1.1732	0.8725	22.1531	23.7787	26.4964	24.1438
040042	1.3805	0.9314	19.9627	21.1716	19.8709	20.3344
040045	1.0416	*	17.2281	*	*	17.2281
040047	1.1288	0.7633	21.9163	22.4249	23.0358	22.4531
040050	1.2290	0.7516	16.3930	17.6906	18.5119	17.5660
040051	0.9632	0.7516	19.1400	21.3342	22.0394	20.8386
040053	***	*	20.7823	*	*	20.7823

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
040054	***	*	18.2685	18.0509	19.5353	18.6008
040055	1.5244	0.8053	23.3156	23.0448	24.9164	23.7097
040062	1.6625	0.8053	23.3082	23.8994	25.2303	24.1355
040067	1.1373	0.7523	16.8800	19.0471	18.9872	18.2681
040069	1.0183	0.8964	24.4662	24.8060	24.9996	24.7603
040071	1.4578	0.8725	24.3824	25.4680	25.2840	25.0575
040072	1.1153	0.7516	19.9009	22.4741	22.1058	21.4220
040074	1.1975	0.8961	25.2423	25.2699	26.2661	25.5884
040075	***	*	18.3253	*	*	18.3253
040076	1.0000	0.8725	20.6272	23.5742	23.0954	22.4197
040077	0.9991	*	18.2082	*	*	18.2082
040078	1.5994	0.9106	24.5377	23.5915	26.1937	24.6735
040080	1.0440	0.8503	22.3392	24.1921	24.8760	23.8555
040081	0.8581	0.7873	15.1081	16.8437	17.2536	16.4124
040084	1.1949	0.8961	24.7225	27.7626	26.6449	26.4201
040085	0.9758	0.8964	29.8444	22.9916	25.7215	25.8637
040088	1.4610	0.7765	22.6183	22.4860	23.6276	22.9191
040091	1.1764	0.7782	23.1320	24.2398	23.1913	23.5100
040100	1.3403	0.8725	20.0460	21.3051	22.6131	21.3769
040105	1.0556	*	18.2182	*	*	18.2182
040109	1.1066	*	22.8801	*	*	22.8801
040114	1.8129	0.8961	24.8992	26.7581	27.7928	26.5383
040118	1.4728	0.8503	24.7363	26.0388	26.8908	25.8812
040119	1.4205	0.8725	21.0103	24.3680	24.2419	23.2187
040126	***	*	14.0700	15.6985	17.3715	15.6137
040132	***	*	28.1393	*	22.0054	24.3534
040134	2.3671	0.8961	27.3412	31.9325	32.2832	30.5661
040137	1.3102	0.8961	25.2907	25.9979	27.7360	26.2750
040138	1.4215	0.8872	25.7513	27.8584	28.3342	27.5137
040141	0.8436	0.8872	24.0901	26.1041	30.3475	26.8847
040142	1.4672	0.9106	27.9696	21.4222	23.8620	24.1239
040143	***	*	*	37.1976	*	37.1976
040144	***	*	*	21.4008	*	21.4008
040145	1.7860	0.8503	*	*	24.4367	24.4367
040146	***	*	*	*	33.7876	33.7876
040147	1.7139	0.8961	*	*	*	*
050002	1.3854	1.5354	34.1948	35.5184	41.7336	37.3207
050006	1.6408	1.2652	30.5373	33.5751	37.1639	33.5391
050007	1.4971	1.4948	38.7033	43.4440	45.8773	42.7095
050008	1.2726	1.4828	39.1539	49.3167	46.8706	45.1816
050009	1.8133	1.4268	39.6393	43.0584	46.2186	43.0443
050013	1.9732	1.4268	31.9837	35.7591	43.5623	36.9784
050014	1.2471	1.2919	33.0373	36.0305	37.4135	35.5238
050015	1.3247	*	30.7940	32.2188	*	31.5274
050016	1.3297	1.2055	26.2161	24.5768	31.0653	27.2795
050017	1.9740	1.3068	36.6593	39.6653	42.2200	39.5192
050018	1.1994	1.1736	22.3472	23.3204	31.8310	25.3549
050022	1.5661	1.1736	29.8632	31.6467	33.0592	31.4883
050024	1.1366	1.1736	27.5587	29.4062	33.4334	30.2003
050025	1.8859	1.1736	36.1622	33.5466	32.7476	34.1071
050026	1.5103	1.1736	28.3027	31.5250	33.1277	31.0373
050028	1.2341	1.1736	26.6160	27.3826	28.5736	27.5339
050030	1.2224	1.1736	24.9707	27.2945	30.9014	27.6434
050036	1.5133	1.1736	32.7929	33.8000	36.0905	34.2482
050038	1.6423	1.5441	38.7527	44.2265	48.7483	44.0206
050039	1.6082	1.1736	31.6734	35.2630	36.6943	34.5173
050040	1.2674	1.1736	34.3279	35.8322	35.7054	35.3257
050042	1.5020	1.2652	33.9415	37.3760	40.3326	37.2065
050043	1.6341	1.5354	43.1589	45.4887	48.2283	45.6945
050045	1.3077	1.1736	23.8408	25.0150	27.0676	25.4080
050046	1.1412	1.1736	25.6875	26.1926	29.1125	26.9715
050047	1.7685	1.4828	40.9874	55.9367	45.1675	47.4627
050054	1.1914	1.1736	24.1262	21.3650	24.0338	23.1316
050055	1.3290	1.4828	37.5879	42.9516	44.2926	41.4282
050056	1.3794	1.1736	27.9330	30.6126	32.7693	30.4552
050057	1.6643	1.1736	29.4351	30.0236	31.7467	30.4506
050058	1.6021	1.1736	33.8215	33.1409	37.2538	34.6985

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
050060	1.4479	1.1736	27.3282	29.9762	32.0196	29.7255
050061	***	*	32.2172	*	*	32.2172
050063	1.3845	1.1736	33.3039	34.0906	36.3085	34.5048
050065	***	*	34.0280	34.9110	38.2421	35.7006
050067	1.1973	1.2020	31.9597	38.8070	40.1393	37.4080
050069	1.7482	1.1736	31.2172	34.6353	35.3850	33.8185
050070	1.2780	1.4948	45.3382	47.4099	46.4009	46.4522
050071	1.2898	1.5344	44.9464	50.7602	49.6495	48.7326
050072	1.3417	1.5344	44.2651	49.4344	50.0343	48.1855
050073	1.3036	1.5344	45.9765	49.9730	49.0069	48.5026
050075	1.3055	1.5354	47.2356	54.4089	49.8290	50.5649
050076	1.8910	1.5344	46.4991	52.3788	50.2039	49.9372
050077	1.6158	1.1736	32.0245	34.8660	36.5384	34.5331
050078	1.2608	1.1736	31.1425	32.0133	30.4274	31.1478
050079	1.5056	1.5344	47.8597	47.3449	48.8994	47.9784
050082	1.6846	1.1736	37.7783	38.2878	37.8905	37.9882
050084	1.5633	1.1942	33.0179	35.5196	39.5748	36.0222
050088	***	*	25.7385	*	*	25.7385
050089	1.3519	1.1736	33.5324	33.9593	36.4018	34.5988
050090	1.2783	1.4802	32.9584	33.8953	37.7421	34.8400
050091	1.0225	1.1736	30.8560	32.1301	37.1223	33.3203
050093	1.5015	1.1736	33.4118	36.9481	36.8486	35.7397
050096	1.2246	1.1736	24.6679	34.9237	33.1322	30.9608
050099	1.4850	1.1736	31.0437	33.4174	32.0650	32.2103
050100	1.8315	1.1736	29.6949	31.4404	33.3959	31.5609
050101	1.2932	1.5344	40.3195	42.4589	47.9327	43.6371
050102	1.2847	1.1736	29.1364	32.0617	32.8434	31.6405
050103	1.5381	1.1736	34.2529	34.0935	35.6773	34.7050
050104	1.4331	1.1736	29.7326	32.3043	33.6204	31.9100
050107	1.5168	1.1736	33.1358	32.5846	33.5687	33.0959
050108	1.9263	1.3068	35.5711	38.8672	42.0131	38.9520
050110	1.2783	1.1736	26.1453	26.8408	28.0670	27.0290
050111	1.2625	1.1736	28.1588	28.7875	31.8766	29.6686
050112	1.5360	1.1736	36.8026	37.7281	38.9483	37.8620
050113	1.2266	1.4948	33.8064	39.4882	42.8884	38.6364
050114	1.4296	1.1736	31.1295	34.0309	35.7274	33.6746
050115	1.4671	1.1736	30.9288	28.8051	32.5257	30.7642
050116	1.7151	1.1736	34.5109	36.8825	37.6018	36.4210
050117	***	*	32.4413	34.2020	35.0531	33.2964
050118	1.2250	1.2020	35.4044	39.9683	41.6701	39.0065
050121	1.2978	1.1736	27.9537	30.6105	34.6244	31.1240
050122	1.5193	1.1942	34.2416	33.9812	34.0259	34.0785
050124	1.2869	1.1736	28.0288	30.2522	29.9944	29.4697
050125	1.5000	1.5441	41.7020	44.9523	47.7578	44.7946
050126	1.4916	1.1736	29.3360	31.7619	32.6686	31.2868
050127	1.3314	1.3068	26.1222	32.0355	40.7610	31.7807
050128	1.4725	1.1736	31.0662	31.1308	33.4233	31.8929
050129	1.8417	1.1736	32.2680	34.7359	36.9887	34.5850
050131	1.3370	1.4802	40.5321	45.3152	47.5257	44.5040
050132	1.4264	1.1736	35.1544	35.9199	39.6807	36.9017
050133	1.5413	1.2919	31.3530	31.9527	33.1814	32.2802
050135	1.0333	1.1736	24.3927	25.1813	25.3209	25.0624
050136	1.3553	1.4802	37.4560	43.3747	46.6619	42.5341
050137	1.4485	1.1736	38.4827	39.1496	40.2457	39.4250
050138	1.7510	1.1736	46.9557	45.3727	40.6343	43.8129
050139	1.3026	1.1736	37.6217	37.8986	38.7385	38.1892
050140	1.3857	1.1736	39.6269	40.9725	39.4954	39.9747
050144	***	*	33.5109	33.6662	38.2424	35.1804
050145	1.4357	1.4594	42.3134	42.2921	48.0796	44.3363
050146	1.7450	*	*	*	*	*
050148	1.0844	*	27.3005	28.2305	*	27.7734
050149	1.4992	1.1736	33.2270	35.8821	37.3616	35.7587
050150	1.2109	1.2919	31.7560	33.6583	37.9946	34.4499
050152	1.4661	1.4828	43.6487	46.1553	51.6567	47.1769
050153	1.4470	1.5441	43.3190	42.8955	47.6374	44.7563
050155	***	*	21.8550	16.9516	16.7756	18.0652
050158	1.3557	1.1736	35.1326	35.7805	39.9160	36.9712

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Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
050159	1.4329	1.1736	31.3199	32.5704	34.6915	32.9769
050167	1.3248	1.1942	28.5179	31.4798	34.0418	31.2303
050168	1.6239	1.1736	33.2506	37.9784	40.5973	37.3823
050169	1.4402	1.1736	27.4644	29.4693	31.4115	29.5647
050172	***	*	28.5604	*	*	28.5604
050173	1.3511	1.1736	30.3582	29.0576	31.6717	30.3454
050174	1.5310	1.4802	40.1747	44.4199	48.1740	44.3520
050175	***	*	30.5733	33.3061	35.0152	32.9392
050177	***	*	25.1442	24.0717	*	24.6196
050179	1.2416	1.2020	27.1155	30.4973	31.6651	30.0130
050180	1.5481	1.5344	40.2504	42.0358	45.7099	42.7961
050188	1.4245	1.5441	39.5110	41.0943	43.7381	41.3973
050189	1.0027	1.4594	29.1279	30.1155	28.7580	29.3259
050191	1.5039	1.1736	34.2091	37.7805	37.8756	36.5700
050192	0.9795	1.1736	27.0424	27.1400	27.8386	27.3401
050193	1.2009	1.1736	29.6421	33.9520	29.0623	30.7523
050194	1.3918	1.5721	40.9096	44.7107	49.0030	44.8987
050195	1.5358	1.5354	48.4358	48.8595	53.5583	50.3395
050196	1.0252	1.1736	32.1933	34.0956	32.8293	33.0383
050197	2.1090	1.5344	48.9053	50.0728	52.9998	50.6892
050204	1.4292	1.1736	28.6423	32.0121	35.3954	32.0139
050205	1.4338	1.1736	27.8611	29.3334	30.6322	29.3026
050207	***	*	29.5214	30.0062	31.3431	30.2629
050211	1.2807	1.5354	41.2166	35.0515	35.0289	36.9047
050214	***	*	23.9972	25.4647	*	24.7211
050215	***	*	43.7985	48.8112	50.7578	47.7260
050219	1.2434	1.1736	22.4065	26.4143	25.8378	24.8927
050222	1.7011	1.1736	29.1094	32.3882	33.7510	31.8388
050224	1.7135	1.1736	29.3143	32.5010	35.7280	32.5355
050225	1.4565	1.1736	29.9656	34.0836	35.1227	33.2224
050226	1.6587	1.1736	30.5867	32.4411	35.4597	32.8050
050228	1.2780	1.4828	42.4226	43.7939	47.1430	44.4650
050230	1.5630	1.1736	32.9555	34.0600	35.8490	34.3219
050231	1.6220	1.1736	30.9607	32.1813	33.7139	32.3034
050232	1.7586	1.2055	27.4099	26.3004	34.3242	29.3642
050234	1.1638	1.1736	29.6561	32.3726	34.8308	32.2031
050235	1.5172	1.1736	29.2979	30.5405	37.0858	32.3689
050236	1.4069	1.1736	32.1647	33.0686	32.6462	32.6402
050238	1.5198	1.1736	31.1764	33.3346	34.0823	32.9745
050239	1.6081	1.1736	31.0963	33.1148	35.9041	33.4240
050240	***	*	35.5735	36.1154	40.7427	37.4962
050242	1.3910	1.5721	44.3130	46.4844	50.9882	47.3502
050243	1.6367	1.1736	31.4883	32.9385	36.1209	33.6114
050245	1.3986	1.1736	28.6527	27.3866	33.2556	29.8371
050248	1.0733	1.4594	35.3864	*	40.4941	37.6896
050251	***	*	27.2675	27.8452	*	27.5819
050253	***	*	24.0044	23.5381	*	23.7879
050254	1.2483	1.3068	27.0041	31.2386	33.0865	30.5679
050256	***	*	29.8194	29.6793	32.7159	30.6561
050257	0.9657	1.1736	21.3216	20.1829	24.0737	21.8495
050261	1.3143	1.1736	27.3234	29.2150	30.8704	29.2688
050262	2.1509	1.1736	44.0256	39.9946	41.4835	41.8533
050264	1.3224	1.5354	41.1211	47.7024	43.4181	44.0806
050270	***	*	32.4812	33.6855	36.0111	34.0811
050272	1.3840	1.1736	27.1989	29.4671	30.9290	29.2682
050276	1.1508	1.5344	39.3778	41.1406	43.7943	41.5076
050277	1.0162	1.1736	32.5213	35.4443	35.0079	34.2968
050278	1.5556	1.1736	29.9244	31.8712	34.3798	32.1741
050279	1.1670	1.1736	27.6573	29.7118	31.6738	29.7052
050280	1.6965	1.2810	35.2030	38.8341	41.3912	38.4324
050281	1.3944	1.1736	27.3824	29.4882	31.6639	29.5782
050283	1.4818	1.5354	43.0638	44.3122	43.6855	43.6928
050289	1.6753	1.4948	41.1774	44.2814	50.1762	45.4611
050290	1.7010	1.1736	34.5482	37.3563	40.6192	37.4597
050291	1.9433	1.4802	35.3653	38.4365	41.2100	38.2986
050292	1.0703	1.1736	26.8879	26.9786	27.3365	27.0752
050295	1.4721	1.1736	36.1950	34.7382	38.4256	36.5470

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
050296	1.1731	1.5441	39.0060	39.9842	42.5405	40.5415
050298	1.1699	1.1736	27.7416	30.2022	33.7864	30.5471
050299	***	*	31.5435	35.1249	32.3707	32.9747
050300	1.4383	1.1736	30.7148	30.2874	33.6821	31.6610
050301	1.2929	1.4147	31.9995	35.9491	37.1103	35.1041
050305	1.4781	1.5354	44.8630	44.9681	48.5339	46.1773
050308	1.5103	1.5441	43.0691	43.7413	46.4180	44.3895
050309	1.4582	1.3068	34.4145	38.2659	40.1499	37.7086
050312	***	*	33.9022	36.8498	*	35.1423
050313	1.2035	1.1942	31.8003	35.0478	37.5024	34.9828
050315	1.2649	1.1736	28.5933	33.2038	32.5538	31.5496
050320	1.3051	1.5354	40.2352	45.7686	46.2071	44.0268
050324	1.7775	1.1736	32.9792	34.5503	36.3474	34.6949
050325	1.2706	1.1769	30.6116	31.3730	37.0441	33.1665
050327	1.7326	1.1736	33.0087	33.9507	35.9349	34.3185
050329	1.2912	1.1736	26.2121	23.2927	33.0390	27.5539
050331	1.1678	*	20.2692	*	*	20.2692
050333	1.0046	1.1736	23.4009	19.6352	18.6534	20.3803
050334	1.6297	1.4594	40.7467	43.9656	47.2968	44.0650
050335	1.3979	1.1769	28.9403	30.9928	34.7192	31.6181
050336	1.2364	1.1942	28.5659	30.4664	31.5480	30.2596
050342	1.2383	1.1736	26.8507	29.2244	30.4226	28.9062
050348	1.7681	1.1736	37.7898	31.5156	32.7107	33.8510
050349	0.9573	1.1736	17.4791	24.4863	25.4266	22.6536
050350	1.3644	1.1736	31.1833	31.0136	31.7908	31.3398
050351	1.5102	1.1736	30.8661	30.6599	33.3064	31.6205
050352	1.3903	1.3068	33.9362	36.7673	37.0807	35.9210
050353	1.4804	1.1736	31.8291	29.4215	30.4206	30.5535
050357	1.4436	1.1736	32.3095	32.6763	36.2089	33.9116
050359	1.1695	1.1736	25.7739	29.8345	31.3391	29.0490
050360	1.4971	1.4802	37.0769	47.4497	52.3811	45.4210
050366	1.1802	1.1751	31.1854	33.6714	37.1527	33.8230
050367	1.4016	1.5344	38.7727	38.6330	40.1904	39.2572
050369	1.4153	1.1736	29.5697	30.6439	32.2467	30.8346
050373	1.5107	1.1736	31.9271	35.1380	34.3737	33.8407
050376	1.5472	1.1736	32.9393	34.3539	35.2837	34.2241
050378	0.9463	1.1736	34.2417	37.9904	40.1923	37.5531
050379	***	*	32.9576	*	*	32.9576
050380	1.6789	1.5441	42.0781	46.0276	49.4258	45.7911
050382	1.3885	1.1736	29.4323	30.4014	32.6683	30.8167
050385	1.3083	1.4802	34.5183	36.8107	36.4188	35.9492
050390	1.1270	1.1736	26.0066	27.3183	27.9359	27.0767
050391	***	*	18.1005	17.2141	*	17.6460
050393	1.4101	1.1736	30.0661	34.1743	35.6356	33.2874
050394	1.6049	1.1736	27.5061	27.4861	32.1894	29.1045
050396	1.6109	1.1736	33.5699	32.4918	37.3972	34.4575
050397	0.7608	1.1736	28.1639	28.3671	29.6825	28.7688
050407	1.1110	1.4828	37.9066	42.2748	44.6839	41.6954
050410	***	*	21.3814	*	*	21.3814
050411	1.3617	1.1736	37.8064	38.8294	38.6328	38.4664
050414	1.3219	1.3068	34.6672	38.7585	41.8688	38.5190
050417	1.2763	1.1736	29.5031	32.9341	36.1222	32.8901
050419	0.8450	*	33.3124	*	*	33.3124
050420	***	*	24.9401	35.2869	39.9237	32.7481
050423	1.0733	1.1736	30.6416	28.3768	31.9751	30.4055
050424	1.9946	1.1736	31.0730	34.5680	36.6091	34.1652
050425	1.3231	1.3068	42.4177	49.2245	46.6628	46.3213
050426	1.4953	1.1736	30.6899	33.2031	34.9855	32.9985
050430	0.9678	1.1736	25.0604	23.9045	24.5327	24.4191
050432	***	*	30.8030	33.1876	35.2416	33.0686
050433	1.6238	1.1736	23.0807	21.3573	21.1287	21.8785
050434	1.0477	1.1736	26.1622	32.6255	33.7794	31.2611
050435	1.2745	1.1736	28.0305	30.6530	33.0372	30.6068
050438	1.5345	1.1736	27.2662	36.3026	36.2044	33.3758
050441	1.9501	1.5441	42.9765	44.5694	46.6160	44.7589
050444	1.3280	1.2214	30.5504	34.6313	37.6821	34.7268
050447	0.9382	1.1736	25.2573	26.7960	29.0780	27.0889

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
050448	1.3449	1.1736	27.9759	30.6201	32.7748	30.3937
050454	1.9048	1.4828	43.5311	38.5833	40.2811	40.7579
050455	1.6157	1.1736	22.7235	30.4606	34.5445	29.0773
050456	1.2382	1.1736	22.5630	21.6261	27.7659	24.0209
050457	1.6411	1.4828	45.5828	47.8947	50.0282	47.8438
050464	1.6927	1.2020	37.3692	38.3058	41.6235	39.0262
050468	1.5316	1.1736	29.5448	31.1111	35.7409	32.2602
050469	1.0345	*	28.9080	30.6502	*	29.7684
050470	1.1011	1.1736	24.6755	27.8678	31.0466	28.1052
050471	1.7531	1.1736	34.5211	35.4768	36.8680	35.6234
050476	1.4502	1.4147	34.6585	38.7856	41.1042	38.1894
050477	***	*	34.6995	37.7668	40.1566	37.8028
050478	0.9888	1.1736	33.3999	40.2558	41.1668	38.4344
050481	1.4426	1.1736	33.7445	36.1394	38.8650	36.2140
050485	1.6524	1.1736	31.4233	36.1488	34.6219	34.0204
050488	1.3381	1.5354	42.9904	42.6854	45.0630	43.6228
050491	***	*	32.1379	34.3598	*	33.1420
050492	1.2500	1.1736	27.1540	28.0826	30.7718	28.6561
050494	1.3595	1.2919	35.9910	38.1177	40.6384	38.1894
050496	1.7137	1.5344	42.2672	48.2468	51.6363	47.5810
050498	1.3353	1.3068	33.0298	37.1667	41.0350	37.0348
050502	1.7120	1.1736	29.5616	28.7046	31.8872	30.0325
050503	1.5059	1.1736	31.6418	34.0994	37.3605	34.4052
050506	1.6121	1.2055	36.0164	37.7420	39.8586	37.9166
050510	1.1736	1.5344	47.5510	52.5376	49.4533	49.9483
050512	1.4090	1.5354	46.9233	50.9264	48.8057	49.0411
050515	1.4085	1.1736	38.9978	38.9542	40.2957	39.4965
050516	1.4990	1.3068	36.2772	39.8161	43.0249	39.7478
050517	1.2487	1.1736	23.9007	20.0213	22.4096	21.9265
050523	1.2609	1.5344	35.5452	40.6535	43.4579	39.9385
050526	1.3236	1.1736	31.3744	28.1997	33.3964	30.8791
050528	1.1384	1.1736	29.6838	31.4941	36.2908	32.6332
050531	1.0427	1.1736	26.9420	27.1974	28.3348	27.4859
050534	1.4830	1.1736	29.8603	33.1666	36.6447	33.1978
050535	***	*	32.3723	34.6143	37.8174	35.0680
050537	1.4153	1.3068	31.3844	34.9931	38.2145	35.0179
050539	***	*	29.8242	*	*	29.8242
050541	1.5793	1.5344	46.1121	52.5908	48.0867	48.9365
050543	0.7499	1.1736	26.1103	29.4443	24.4913	26.5587
050545	0.8097	1.1736	30.5554	31.3080	35.3209	32.3832
050546	0.6608	1.1736	30.2329	33.2245	36.5099	33.2376
050547	0.9370	1.4802	33.2204	34.8401	33.8036	33.9243
050548	0.8110	1.1736	30.3775	39.2234	41.1075	36.6565
050549	1.5409	1.1736	34.9818	35.2792	38.3927	36.2153
050550	***	*	30.2301	30.9612	34.9476	31.9494
050551	1.3354	1.1736	31.6165	34.0467	37.2506	34.3701
050552	1.0600	1.1736	27.1744	33.0711	33.9810	31.2584
050557	1.6021	1.2020	31.8048	33.3654	35.7023	33.6767
050561	1.5394	1.1736	38.8652	38.0196	38.2543	38.3445
050567	1.6001	1.1736	32.9829	35.7063	37.6384	35.4790
050568	1.1557	1.1736	24.4061	25.2337	26.0908	25.2915
050569	1.3188	*	33.0259	31.6785	*	32.3431
050570	1.5431	1.1736	34.0171	34.5161	38.4373	35.7023
050571	***	*	33.6156	34.7627	39.0649	35.8458
050573	1.6281	1.1736	34.1991	34.7279	35.2842	34.7594
050575	1.2413	1.1736	25.2513	25.1457	23.7990	24.6725
050577	***	*	30.8841	32.3744	*	31.6437
050578	1.5073	1.1736	33.8825	35.2390	31.3639	33.5051
050579	***	*	39.4976	42.5081	*	40.8657
050580	1.2333	1.1736	31.6256	31.5806	34.1531	32.4721
050581	1.4916	1.1736	32.1801	34.0136	37.7567	34.6700
050583	1.6463	1.1736	33.3697	34.5747	37.4450	35.0070
050584	1.3197	1.1736	24.8180	30.3434	30.7839	28.6031
050585	***	*	22.7121	22.2521	*	22.4798
050586	1.2833	1.1736	27.4173	26.4782	31.3513	28.3870
050588	1.3520	1.1736	32.8212	32.7556	37.7387	34.4140
050589	1.1529	1.1736	30.9546	34.5100	37.6886	34.3942

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
050590	1.2947	1.3068	32.2142	38.4971	41.7519	37.3616
050591	***	*	28.8549	30.6106	34.7133	31.3307
050592	***	*	24.4542	27.3606	31.8053	27.4568
050594	***	*	34.7946	36.5256	42.0788	37.6355
050597	1.2585	1.1736	27.5691	28.8294	31.5625	29.3959
050599	1.8926	1.3068	38.1975	32.7835	34.7187	35.1751
050601	1.5530	1.1736	34.7409	36.0572	39.7717	36.8588
050603	1.4447	1.1736	30.2464	34.0275	35.0279	33.2305
050604	1.3981	1.5441	49.9428	55.0821	49.4446	51.2951
050608	1.2664	1.1736	23.3630	30.4169	31.2909	28.2962
050609	1.2820	1.1736	41.1797	41.7208	39.7397	40.7273
050613	***	*	*	42.8108	42.9930	42.8892
050615	***	*	33.2909	35.9547	39.1299	36.0890
050616	1.5105	1.1736	36.9017	37.7284	37.1200	37.2515
050618	0.9805	1.1736	27.4539	31.3182	33.1472	30.7682
050623	***	*	32.0627	*	*	32.0627
050624	1.2787	1.1736	32.2907	33.9594	35.9346	34.1566
050625	1.7417	1.1736	36.3631	38.6591	41.0439	38.7106
050630	***	*	30.9410	*	*	30.9410
050633	1.2282	1.2055	35.3734	36.8302	38.4916	36.8992
050636	1.2917	1.1736	30.5156	32.5576	33.0718	32.0958
050641	1.2925	1.1736	21.4612	39.6921	32.3586	29.3383
050644	0.9879	1.1736	27.6547	28.8237	30.7981	29.0878
050660	1.7387	*	*	*	*	*
050662	0.8701	1.5441	32.6362	33.2446	38.3017	34.3633
050663	1.2787	1.1736	25.7747	27.7334	17.7035	22.5204
050667	0.8474	1.4268	26.3937	24.2771	25.9161	25.5327
050668	1.2080	1.4828	31.8065	56.6555	51.6049	44.4447
050674	1.1462	1.3068	42.6866	48.0893	47.0720	46.1691
050677	1.4838	1.1736	38.7984	38.5770	39.2161	38.8994
050678	1.3184	1.1736	30.7219	32.4473	33.7633	32.3842
050680	1.2329	1.5344	38.3946	38.2871	37.9856	38.2008
050682	0.8469	1.1736	21.7792	17.9077	22.2193	20.5433
050684	1.1133	1.1736	26.4234	27.5256	28.8378	27.6192
050686	1.2184	1.1736	40.9486	41.0188	39.7757	40.4752
050688	1.2024	1.5441	41.9325	44.1510	49.4062	45.3230
050689	1.5246	1.5344	42.2018	45.0951	48.8533	45.3625
050690	1.1505	1.4802	47.2769	50.9094	49.0226	49.1863
050693	1.3838	1.1736	35.0621	34.5797	39.6838	36.3980
050694	1.0491	1.1736	28.9544	30.7858	32.1065	30.6719
050695	***	*	35.6548	39.6004	49.0340	41.9291
050696	2.2803	1.1736	35.9220	37.3837	39.8963	37.7297
050697	1.1042	1.2810	25.1984	16.6605	22.1441	20.8111
050699	***	*	26.8211	28.9083	21.5725	25.9115
050701	1.3268	1.1736	29.6253	31.9529	34.9876	32.5132
050704	1.0048	1.1736	25.3488	29.7740	31.6097	29.0145
050707	1.2478	1.4948	34.0550	35.7311	43.5555	37.4838
050708	1.5880	1.1736	22.5034	30.5860	31.8442	27.9326
050709	1.4145	1.1736	25.6119	26.8549	24.5621	25.5804
050710	1.4535	1.1736	39.9858	45.8022	44.2482	43.5809
050713	***	*	20.2803	21.1273	21.4825	20.8079
050714	1.3819	1.5721	33.6676	31.9527	34.1542	33.3149
050717	1.4472	1.1736	38.0796	39.3227	38.8773	38.7316
050718	***	*	21.4996	25.5140	31.9622	26.0529
050720	0.9087	1.1736	30.0811	29.4726	30.3595	29.9462
050722	0.9937	1.1736	*	31.4867	33.7991	32.6970
050723	1.3661	1.1736	35.0119	38.5446	38.7140	37.6299
050724	1.9875	1.1736	34.4267	31.6910	35.2344	33.8380
050725	0.8900	1.1736	21.7816	24.3100	30.0580	25.0169
050726	1.4849	1.2020	27.8433	30.6479	28.6361	29.1183
050727	1.2033	1.1736	24.3026	33.9118	32.7783	30.6217
050728	***	*	36.0820	39.3581	41.8263	38.7034
050729	***	*	34.2580	36.5432	38.1882	36.3976
050730	***	*	51.5425	37.0629	39.2046	42.2691
050732	2.3947	1.1736	*	*	33.6831	33.6831
050733	1.6531	1.2810	*	*	40.1517	40.1517
050734	***	*	*	*	31.2883	31.2883

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
050735	1.3414	1.1736	*	*	*	*
050736	1.2215	1.1736	*	*	*	*
050737	1.4935	1.1736	*	*	*	*
050738	1.3812	1.1736	*	*	*	*
050739	1.6758	1.1736	*	*	*	*
050740	1.3840	1.1736	*	*	*	*
050741	1.4977	1.1736	*	*	*	*
050742	1.3973	1.1736	*	*	*	*
050744	1.9639	1.1736	*	*	*	*
050745	1.3614	1.1736	*	*	*	*
050746	1.7868	1.1736	*	*	*	*
050747	1.4029	1.1736	*	*	*	*
050748	1.0605	1.1942	*	*	*	*
050749	1.2549	1.1736	*	*	*	*
050750	1.4161	1.2020	*	*	*	*
050751	3.3418	1.1736	*	*	*	*
050752	1.4159	1.1736	*	*	*	*
050753	1.7076	1.1736	*	*	*	*
050754	1.2457	1.4948	*	*	*	*
050755	1.4141	1.1736	*	*	*	*
050756	1.9522	1.1736	*	*	*	*
050758	3.6091	1.1736	*	*	*	*
060001	1.5654	1.0455	26.8470	29.6191	31.0018	29.1634
060003	1.3970	1.0455	24.2224	29.4809	31.3616	28.3333
060004	1.2505	1.0455	29.9649	32.4609	32.0095	31.4837
060006	1.3300	0.9448	24.5704	25.2139	27.2057	25.6628
060008	1.2032	0.9448	23.3859	23.0947	26.5175	24.3270
060009	1.4945	1.0455	28.7645	31.5210	32.4208	30.9678
060010	1.6912	0.9733	28.9850	27.1916	29.5304	28.5344
060011	1.6330	1.0455	27.2833	35.1573	32.1001	31.3632
060012	1.4825	0.9467	26.2469	27.3885	28.7724	27.4500
060013	1.5046	0.9448	24.5994	26.8675	27.9145	26.4238
060014	1.8610	1.0455	31.2588	31.0542	31.9389	31.4097
060015	1.7851	1.0455	30.4533	32.5285	32.2927	31.6808
060016	1.2417	0.9448	25.6527	26.5427	27.1430	26.4586
060018	1.2836	0.9448	25.7628	24.1086	25.3897	25.0879
060020	1.6165	0.9448	22.6748	24.5992	25.9147	24.3734
060022	1.6516	0.9467	26.5238	28.2944	29.3379	28.0339
060023	1.6699	1.0455	27.7644	29.5760	31.1556	29.4769
060024	1.8432	1.0455	29.0130	30.0279	31.5411	30.2384
060027	1.6691	1.0455	28.0909	29.6121	30.9212	29.6273
060028	1.5125	1.0455	30.0448	31.6900	32.1656	31.3047
060030	1.4488	0.9733	26.6251	27.8642	29.9513	28.1546
060031	1.5591	0.9467	26.3650	27.8345	29.3907	27.8462
060032	1.4850	1.0455	30.4247	31.0686	32.7383	31.4187
060034	1.6640	1.0455	29.8445	30.9359	32.1252	30.9377
060036	1.1018	0.9448	20.7131	20.3226	22.8256	21.2502
060041	0.8785	0.9448	23.4978	24.6142	25.9710	24.7303
060043	1.1879	0.9448	18.7897	18.2143	21.9955	19.6596
060044	1.2127	0.9448	25.0360	26.5611	24.8352	25.4581
060049	1.2787	0.9580	29.0598	29.3724	30.2192	29.5665
060054	1.4508	1.0136	22.3490	24.3389	25.0980	23.9188
060064	1.7308	1.0455	31.3105	32.3681	33.2428	32.1357
060065	1.3983	1.0455	31.1987	32.4735	33.8538	32.5473
060071	1.1697	0.9448	25.7248	27.6657	28.1762	27.2779
060075	1.3389	1.0136	32.7563	32.2545	37.6023	34.1968
060076	1.2662	0.9448	26.8236	26.5631	30.7808	28.0383
060096	1.5564	1.0455	30.0602	32.1310	37.8243	33.2697
060100	1.6916	1.0455	32.1537	32.6104	33.2145	32.6673
060103	1.3607	1.0455	30.3003	31.6314	32.9690	31.6638
060104	1.3818	1.0455	32.0889	32.4232	35.4409	33.2464
060107	1.4409	1.0455	26.1883	26.8388	28.0660	27.0405
060112	1.6549	1.0455	*	34.9272	34.7116	34.8116
060113	1.4257	1.0455	*	*	32.6073	32.6073
060114	1.3815	1.0455	*	*	34.8536	34.8536
060115	0.8094	0.9448	*	*	*	*
060116	1.4020	1.0455	*	*	*	*

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
060117	1.5297	0.9448	*	*	*	*
060118	1.2063	0.9448	*	*	*	*
070001	1.6191	1.2626	34.0302	35.8958	37.0403	35.6798
070002	1.7625	1.2433	31.1530	33.4398	34.7636	33.1056
070003	1.1124	1.2433	32.4197	34.1352	35.6320	34.0741
070004	1.1690	1.2433	29.2544	29.4448	29.9557	29.5654
070005	1.3939	1.2626	32.1668	33.7813	34.9404	33.6347
070006	1.3734	1.3003	36.8469	37.9148	39.3935	38.0396
070007	1.3262	1.2433	31.7125	35.9617	36.2914	34.6709
070008	1.1977	1.2433	26.4806	28.5506	30.7305	28.5900
070009	1.1826	1.2433	30.2706	32.9299	35.5670	32.9116
070010	1.7655	1.3003	32.5798	35.3730	36.7227	34.9766
070011	1.4443	1.2433	29.9105	31.8987	31.6843	31.1785
070012	1.2719	1.2433	44.1424	29.4216	31.9345	33.9309
070015	1.3965	1.3003	33.4595	35.3385	37.3454	35.4457
070016	1.5006	1.2626	31.0904	31.4930	33.2391	31.9056
070017	1.3588	1.2626	31.7223	34.0490	35.6456	33.8516
070018	1.4240	1.3003	37.6081	39.7515	41.8460	39.8228
070019	1.3281	1.2626	31.8148	34.5125	33.7246	33.3670
070020	1.3289	1.2433	31.0935	33.6453	32.9714	32.5833
070021	1.1631	1.2433	33.2357	36.9241	38.5623	36.2063
070022	1.6736	1.2626	35.4120	39.0462	40.2283	38.2889
070024	1.3628	1.2433	32.0430	35.2323	34.7419	34.0490
070025	1.8086	1.2433	30.9938	32.4085	34.5887	32.6669
070027	1.4467	1.2433	31.8018	29.8513	30.4433	30.7112
070028	1.5979	1.3003	31.5035	35.1966	38.0855	34.9184
070029	1.3082	1.2433	27.7213	30.9299	31.0662	29.9131
070031	1.2692	1.2626	28.9189	30.1915	30.4054	29.8553
070033	1.4708	1.3003	37.1929	40.1594	41.7955	39.7822
070034	1.3978	1.3003	36.3899	38.3965	40.1685	38.3201
070035	1.2876	1.2433	27.5585	30.7440	32.2766	30.1626
070036	1.6060	1.2433	36.1610	38.3413	42.3391	39.0110
070038	1.3936	1.2626	25.7516	25.7914	35.8053	27.8684
070039	0.9371	1.2626	31.2269	36.1369	34.7219	33.8193
070040	0.9999	1.2433	*	*	*	*
080001	1.6247	1.0766	30.0242	32.0105	33.5310	31.8696
080002	***	*	27.7932	29.6800	31.3391	29.5960
080003	1.5716	1.0766	29.2266	30.7697	34.3048	31.5058
080004	1.5142	1.0667	27.4921	30.1094	32.2443	30.0060
080006	1.3077	1.0105	25.6160	27.4749	28.8862	27.4041
080007	1.3915	1.0499	27.0074	30.1100	31.1645	29.4885
090001	1.7715	1.0676	35.0413	36.6577	38.3043	36.6494
090003	1.2497	1.0676	29.2660	31.0419	32.1960	30.9276
090004	1.9608	1.0676	32.2021	35.6964	37.3798	35.0400
090005	1.3882	1.0676	30.7728	33.0178	33.7448	32.5073
090006	1.4079	1.0676	29.5590	29.4912	31.3562	30.1264
090008	1.3376	1.0676	29.1059	32.0745	33.7471	31.3884
090011	2.0575	1.1017	34.0693	36.7579	38.0654	36.2932
100001	1.5331	0.9089	24.4060	26.4631	27.2809	26.0728
100002	1.4368	1.0248	25.3389	27.2350	28.7068	27.1087
100004	0.9210	*	16.5974	*	*	16.5974
100006	1.6452	0.9285	26.3789	29.1505	28.3673	27.9603
100007	1.6373	0.9285	26.5378	28.5702	29.0472	28.0969
100008	1.7213	1.0009	27.4314	29.1705	30.3392	29.0493
100009	1.4490	1.0009	25.9381	27.4424	27.8618	27.0421
100012	1.6154	0.9486	26.3788	28.4600	29.8353	28.2813
100014	1.4083	0.9171	24.5862	25.1524	27.4019	25.7601
100015	1.3028	0.9171	24.6038	26.0916	27.2483	25.9359
100017	1.6275	0.9171	26.1580	27.9654	28.2402	27.5020
100018	1.6508	0.9619	28.1481	30.2423	30.6545	29.7108
100019	1.6608	0.9380	27.6179	28.6630	30.3008	28.8670
100020	***	*	23.9414	27.1257	*	25.5458
100022	1.7420	1.0248	29.9345	32.8088	36.7912	33.2233
100023	1.5160	0.9171	23.0074	25.2652	25.4270	24.5739
100024	1.1780	1.0009	30.2395	29.1894	29.5423	29.6470
100025	1.6816	0.8733	22.1580	23.3843	26.7013	24.0625
100026	1.5788	0.8733	21.4703	23.4730	26.0147	23.7184

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
100027	***	*	16.1223	18.9432	*	17.4007
100028	1.3580	0.9380	26.8661	27.7497	27.5664	27.4076
100029	1.2822	1.0009	27.5844	28.8842	30.5382	29.0530
100030	1.2839	0.9285	24.0943	24.6314	25.3513	24.7170
100032	1.8022	0.9171	25.2450	26.8162	26.9275	26.3598
100034	1.8268	1.0009	25.9415	28.1280	27.2915	27.0674
100035	1.5677	0.9771	26.9407	29.4803	30.2382	28.8750
100038	1.8213	1.0248	29.8583	31.3403	31.6657	30.9770
100039	1.5152	1.0248	28.4627	28.2531	29.3699	28.6922
100040	1.7005	0.9089	23.6443	26.2429	27.2835	25.7456
100043	1.3766	0.9171	25.2273	26.4221	27.0054	26.2287
100044	1.4158	1.0036	28.3596	30.3659	33.1141	30.6154
100045	1.3353	0.9171	26.9641	29.7375	26.5413	27.7587
100046	1.3025	0.9171	26.3673	26.9469	26.7702	26.6963
100047	1.8643	0.9771	25.0404	26.7674	29.9729	27.2658
100048	0.9265	0.8733	18.8770	19.3226	20.2657	19.5008
100049	1.1601	0.8835	22.9809	24.0385	24.5571	23.8789
100050	1.1287	1.0009	19.8713	21.5101	25.3354	22.2763
100051	1.3531	0.9285	23.1940	28.0946	28.6225	26.7140
100052	1.4482	0.8835	22.3920	23.6796	23.4036	23.1677
100053	1.2917	1.0009	27.3224	28.5118	31.7415	29.1121
100054	1.3029	0.8733	28.0512	28.7646	30.5515	29.0987
100055	1.4149	0.9171	23.5332	25.6243	27.3826	25.3801
100057	1.4545	0.9285	25.3897	24.8010	26.3134	25.5307
100061	1.5462	1.0009	29.2565	31.4413	30.4528	30.3973
100062	1.6808	0.8733	25.2340	25.1280	25.9597	25.4599
100063	1.3031	0.9171	24.7026	25.5097	26.4139	25.5745
100067	1.4065	0.9171	26.1213	26.8628	27.4762	26.8565
100068	1.6610	0.9171	25.9202	26.1341	27.6576	26.5514
100069	1.4494	0.9171	24.7442	25.7450	27.2108	25.8887
100070	1.7132	0.9771	24.8883	26.8461	29.2005	26.9667
100071	1.2744	0.9171	24.9682	26.3768	25.3667	25.5850
100072	1.3878	0.9171	26.0459	25.7962	27.1889	26.3540
100073	1.7724	1.0248	30.3358	30.5845	29.4165	30.1139
100075	1.4514	0.9171	25.1691	25.7612	27.6534	26.2376
100076	1.1671	1.0009	21.9483	23.4551	24.0412	23.1092
100077	1.3562	0.9771	26.0347	30.6925	30.7564	29.1495
100079	1.5014	*	*	*	*	*
100080	1.7114	1.0248	27.0126	28.2188	29.5346	28.2767
100081	0.9416	0.8733	15.6661	16.9756	19.5711	17.4305
100084	1.7873	0.9285	26.3393	27.4947	32.7503	28.7737
100086	1.2965	1.0248	28.2641	28.5971	29.9072	28.9234
100087	1.8981	0.9771	27.1531	29.5823	30.5938	29.1299
100088	1.5782	0.9089	25.9182	26.7574	28.2825	27.0232
100090	1.4904	0.9089	24.2422	26.5703	27.6175	26.1889
100092	1.5158	0.9380	28.4789	27.8341	26.6315	27.6313
100093	1.7127	0.8733	21.3524	21.6438	22.5555	21.8792
100099	1.0873	0.8835	21.3035	25.8454	26.2395	24.4525
100102	1.0996	0.8858	23.8596	26.1015	27.8551	25.9619
100105	1.4480	0.9852	26.8091	29.9745	30.9915	29.2009
100106	1.0560	0.8733	24.0389	24.7650	24.8098	24.5435
100107	1.2347	0.9486	26.1337	27.4760	30.5764	28.1079
100108	0.8046	0.8733	22.0750	21.3540	22.6270	21.9880
100109	1.2508	0.9171	24.9951	25.5669	26.2446	25.6303
100110	1.6550	0.9285	29.1494	29.4788	29.5985	29.4188
100113	2.0264	0.9302	26.3806	28.0440	29.2429	27.9271
100114	1.3817	1.0009	29.2195	29.2862	30.2544	29.5959
100117	1.2145	0.9089	26.4536	27.7198	28.4928	27.6036
100118	1.3596	0.9089	28.0569	27.6438	27.0981	27.5188
100121	1.1043	0.8835	24.8579	26.2990	27.9353	26.4264
100122	1.2268	0.8733	23.4751	24.6285	26.7175	24.9538
100124	1.1542	0.8733	22.7023	24.0333	24.8880	23.9087
100125	1.1875	1.0009	26.7452	29.7750	31.7749	29.5544
100126	1.3314	0.9171	24.4515	29.6247	28.3213	27.4142
100127	1.5666	0.9171	24.4485	26.0923	27.4632	26.0315
100128	2.2084	0.9171	29.4979	29.2566	30.0324	29.6033
100130	1.1786	1.0248	24.2046	26.0268	28.3651	26.1504

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Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
100131	1.4165	1.0009	29.2462	27.8164	29.7647	28.9653
100132	1.2457	0.9171	24.3293	26.0526	27.8180	26.1461
100134	0.8565	0.8733	20.9243	20.7367	21.6544	21.1186
100135	1.6113	0.9028	24.0024	26.7030	29.1856	26.5350
100137	1.2884	0.8835	25.1974	24.8519	26.8391	25.6704
100139	0.8316	0.9302	17.5489	18.2197	21.1310	18.9563
100140	1.0862	0.9089	26.4720	26.1352	27.8352	26.8143
100142	1.2095	0.8733	22.9577	24.8853	25.6999	24.5446
100150	1.2689	1.0009	26.1990	26.8492	27.7740	26.9185
100151	1.7476	0.9089	28.1322	30.6447	29.7267	29.4931
100154	1.5849	1.0009	27.6127	28.2506	29.7332	28.5816
100156	1.1335	0.9302	26.7092	27.5706	28.3927	27.6111
100157	1.5749	0.9171	27.3851	29.7455	30.3086	29.2306
100160	1.1427	0.8733	26.9851	30.7454	30.6902	29.5445
100161	1.5163	0.9285	28.8077	28.0545	29.5673	28.8155
100166	1.4671	0.9771	27.9618	28.8685	30.1811	28.9924
100167	1.3044	1.0248	30.3694	30.2166	31.7813	30.8188
100168	1.4077	1.0248	27.1292	27.6739	27.0938	27.2997
100172	1.2812	1.0009	18.2735	20.7857	22.2183	20.2634
100173	1.6816	0.9171	24.8721	26.5436	28.6402	26.6632
100175	0.9376	0.8733	23.5455	23.9665	25.0913	24.2153
100176	1.9322	1.0248	31.2694	30.7087	33.3181	31.7301
100177	1.3034	0.9380	26.6781	28.0089	29.6284	28.1072
100179	1.8025	0.9089	29.5619	29.1111	29.2795	29.3153
100180	1.3656	0.9171	27.1804	29.9238	31.0099	29.4514
100181	1.0916	1.0009	21.8540	24.3708	23.9656	23.5712
100183	1.2331	1.0009	27.4951	29.0270	30.5042	28.9860
100187	1.2405	1.0009	27.3653	27.8144	30.7705	28.5922
100189	1.3212	1.0248	28.4136	28.8320	29.9376	29.0848
100191	1.3251	0.9171	26.6341	28.3710	29.4533	28.2035
100200	1.3568	1.0248	29.8963	28.7694	29.6400	29.4296
100204	1.5564	0.9302	25.7537	27.4763	27.2819	26.8493
100206	1.3044	0.9171	25.2196	27.0295	27.7551	26.6843
100209	1.4511	1.0009	26.6245	26.8473	28.5336	27.3567
100210	1.6418	1.0248	28.9486	29.8515	32.0830	30.2959
100211	1.1980	0.9171	24.7095	24.7533	26.2859	25.2466
100212	1.5281	0.8733	24.7566	26.1846	27.7960	26.2590
100213	1.5667	0.9771	27.1936	27.9283	29.5218	28.1998
100217	1.2128	0.9852	25.2907	27.3989	27.7683	26.8879
100220	1.7272	0.9486	26.0905	28.3868	29.3601	28.0186
100223	1.5830	0.8733	24.7015	25.0332	26.1115	25.3049
100224	1.2841	1.0248	24.8077	26.6446	28.0455	26.4947
100225	1.2966	1.0248	28.4316	28.5259	30.8782	29.2134
100226	1.2741	0.9089	29.3317	28.8165	28.8791	28.9967
100228	1.3720	1.0248	29.8952	28.1396	30.1635	29.3741
100230	1.3872	1.0248	28.1703	29.8493	31.9448	29.9638
100231	1.7057	0.8733	25.5175	25.7037	26.6773	25.9676
100232	1.2525	0.9302	24.9322	28.5537	28.3892	27.3025
100234	1.2967	1.0248	26.3601	27.4456	28.8835	27.5798
100236	1.4833	0.9771	26.6585	28.9955	28.3017	27.9879
100237	1.9061	1.0248	31.3543	31.7848	33.1536	32.0709
100238	1.6524	0.9171	28.4302	30.1094	31.4198	30.0500
100239	1.2450	0.9771	27.7592	28.6893	29.0650	28.5164
100240	1.0067	1.0009	25.3265	27.3523	29.7000	27.5097
100242	1.4462	0.8733	24.0990	25.6083	26.1988	25.3024
100243	1.5930	0.9171	26.1131	27.4534	28.3894	27.3449
100244	1.4214	0.9486	25.2584	26.6876	28.2881	26.8124
100246	1.5767	1.0036	28.9894	29.3310	30.1061	29.4946
100248	1.5245	0.9171	27.7798	28.8082	30.2133	28.9513
100249	1.2736	0.9171	23.2084	24.9876	26.4676	24.9134
100252	1.1775	0.9852	25.8540	27.8256	27.1639	26.9484
100253	1.3700	1.0248	25.7121	27.4927	28.7770	27.3747
100254	1.5053	0.9028	25.7338	26.1406	27.4900	26.4898
100255	1.2926	0.9171	24.4808	26.5571	27.3866	26.1585
100256	1.8509	0.9171	28.8856	30.3081	30.2093	29.8134
100258	1.5137	1.0248	31.2482	31.2203	33.8630	32.1172
100259	1.2826	0.9171	26.0175	27.4809	29.0612	27.5355

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
100260	1.3247	1.0036	27.5188	26.7129	28.2301	27.4901
100264	1.3409	0.9171	25.5489	26.8216	28.0370	26.7874
100265	1.2691	0.9171	24.1454	25.7432	26.3326	25.4676
100266	1.4175	0.8733	23.2340	23.0208	24.2517	23.5318
100267	1.3146	0.9771	27.3769	28.7259	28.9674	28.3539
100268	1.1557	1.0248	29.2898	29.0668	30.5750	29.6378
100269	1.3557	1.0248	26.7450	26.6047	27.8407	27.0869
100271	2.3567	*	*	*	*	*
100275	1.2876	1.0248	26.0361	26.8943	28.7797	27.3049
100276	1.2417	1.0248	30.0576	29.7606	30.5720	30.1327
100277	1.4051	1.0009	16.5427	20.4791	24.1122	20.4492
100279	1.3366	0.9486	26.8606	28.6383	29.2257	28.2861
100281	1.3703	1.0248	28.6660	29.6698	30.9131	29.8017
100284	1.0113	1.0009	23.8170	22.3134	25.2637	23.6827
100285	1.2689	1.0248	*	*	41.9481	41.9481
100286	1.6191	0.9619	29.4284	28.3645	25.8085	27.6610
100287	1.3868	1.0248	28.3427	28.1051	29.7536	28.7018
100288	1.5156	1.0248	33.8141	28.7902	31.0506	31.0802
100289	1.6865	1.0248	29.2915	29.6376	31.9011	30.3063
100290	1.1899	0.9315	23.5080	27.1011	28.7111	26.4179
100291	1.2458	0.9380	*	28.4722	28.1515	28.2974
100292	1.3544	0.8733	*	26.7063	27.7644	27.2418
100293	***	*	*	32.7963	*	32.7963
100294	***	*	*	30.7557	*	30.7557
100295	***	*	*	26.1983	*	26.1983
100296	1.3408	1.0009	*	*	29.3870	29.3870
100297	***	*	*	*	32.1536	32.1536
100298	0.8217	0.9028	*	*	19.0297	19.0297
100299	1.2623	0.9771	*	*	34.3697	34.3697
100300	1.5491	0.9771	*	*	*	*
100301	2.4311	0.8733	*	*	*	*
100302	1.1232	0.9285	*	*	*	*
110001	1.3413	0.8583	25.3102	26.4338	26.5640	26.1063
110002	1.3627	0.9813	25.3897	26.4715	26.2228	26.0377
110003	1.2925	0.7861	21.4002	22.7066	24.2097	22.7660
110004	1.3576	0.8963	23.9911	24.9978	25.1846	24.7384
110005	1.2344	0.9813	22.8999	28.1209	27.2826	26.2185
110006	1.5283	0.9997	28.6090	28.3839	*	28.4953
110007	1.5851	0.8667	23.8729	26.6396	26.3133	25.6316
110008	1.3081	0.9813	27.1711	29.2947	30.9757	29.1807
110010	2.2316	0.9813	29.7142	31.7185	33.2396	31.5599
110011	1.2246	0.9813	26.0899	28.0598	28.5892	27.5869
110015	1.0599	0.9813	26.6610	28.1274	28.8796	27.9810
110016	1.2630	0.8588	21.7610	22.7263	24.3563	22.9378
110018	1.1608	0.9813	28.2431	26.8016	30.1849	28.3512
110020	1.3212	0.9813	26.8501	28.3822	27.5559	27.6146
110023	1.2983	0.9813	27.3029	29.8061	29.3282	28.8606
110024	1.4918	0.8891	25.7205	27.0225	27.3357	26.6955
110025	1.4750	0.9765	26.1311	31.0703	30.2845	29.1378
110026	1.1088	0.7861	21.2827	21.8018	22.8820	21.9825
110027	1.0967	0.7861	20.2175	22.6058	25.5291	22.6326
110028	1.7895	0.9599	28.1619	30.4641	31.4568	30.0489
110029	1.8257	0.9813	24.8893	27.3618	29.2134	27.2823
110030	1.3179	0.9813	26.4770	29.6841	29.9531	28.7936
110031	1.2864	0.9813	24.7874	27.1989	29.5533	27.2214
110032	1.1823	0.7861	21.9407	23.2586	25.1896	23.4280
110033	1.4755	0.9813	28.3210	30.3415	32.4178	30.4701
110034	1.7240	0.9599	26.9986	27.2338	28.7915	27.6795
110035	1.7468	0.9813	27.4583	28.9408	30.1852	28.9129
110036	1.8443	0.8891	26.8789	26.6664	27.2280	26.9397
110038	1.5056	0.8454	21.2138	22.2720	22.9685	22.1533
110039	1.3676	0.9599	24.7248	26.3503	26.2485	25.8081
110040	1.0900	0.9813	19.7509	20.9487	23.9526	21.5987
110041	1.2685	0.9813	23.4073	24.8864	26.1948	24.8276
110042	1.0546	0.9813	28.6873	34.9954	33.4391	32.3610
110043	1.7588	0.8891	26.6323	27.8477	28.8551	27.7751
110044	1.1550	0.7861	20.9654	23.3039	24.3772	22.8675

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
110045	1.0604	0.9813	24.9821	24.4275	27.7619	25.7235
110046	1.1564	0.9813	23.8292	26.7464	*	25.2689
110050	1.0878	0.8583	26.1319	27.5985	27.0651	26.9506
110051	1.1325	0.7861	19.4276	20.1756	21.4898	20.4314
110054	1.3879	0.9813	25.7085	28.9254	29.4691	28.1296
110059	1.1614	0.7861	20.5565	23.2137	24.7838	22.7781
110064	1.5600	0.9020	24.2739	24.1219	26.9363	25.1484
110069	1.3210	0.9568	24.1669	26.2085	29.9098	26.8651
110071	1.1303	0.7861	18.0224	21.3963	21.2041	20.2222
110073	1.0732	0.7861	18.6336	18.5753	23.3571	20.1191
110074	1.5633	0.9997	27.1207	27.9190	31.0062	28.6224
110075	1.2368	0.8891	22.0935	23.7585	24.8244	23.5723
110076	1.4789	0.9813	26.3506	28.7871	29.4344	28.2028
110078	2.0203	0.9813	29.5779	29.9625	30.5196	30.0318
110079	1.4371	0.9813	23.1024	26.8412	27.3274	25.6718
110080	***	*	22.3213	18.4714	*	20.3904
110082	1.9484	0.9813	29.8366	30.8320	30.1072	30.2642
110083	1.9004	0.9813	27.8245	30.4287	34.0610	30.7539
110086	1.2918	0.7861	21.1508	21.6898	22.9959	21.9535
110087	1.4785	0.9813	28.0471	28.1633	31.0403	29.1240
110089	1.1256	0.7861	21.9509	23.9026	24.3327	23.4318
110091	1.2985	0.9813	26.5523	29.5337	27.0994	27.7306
110092	1.0708	0.7861	18.5527	20.8911	21.4168	20.2706
110095	1.4671	0.8667	23.4846	26.3075	28.0526	25.9759
110100	0.9760	0.8651	16.5600	16.2575	20.8201	17.8670
110101	1.0211	0.7928	16.4269	19.4257	21.0983	18.9322
110104	1.0922	0.7861	18.7951	20.3777	21.8966	20.4323
110105	1.3384	0.7861	21.1077	23.1405	23.4010	22.5530
110107	1.9638	0.9749	26.2526	28.9352	30.1027	28.5426
110109	1.0216	0.7861	21.4279	23.0376	21.6023	22.0301
110111	1.1565	0.9599	29.2189	25.1270	25.7084	26.4563
110112	0.9102	0.7861	24.2464	22.7672	26.4089	24.5417
110113	0.9646	0.9599	19.1752	21.3417	22.0793	20.8903
110115	1.6861	0.9813	32.0198	31.5074	32.7927	32.1145
110121	1.0425	0.8454	21.6637	26.2336	23.4571	23.8303
110122	1.5379	0.8454	23.7589	25.1934	25.4439	24.7899
110124	1.0500	0.7861	22.7058	22.9212	22.9571	22.8637
110125	1.2981	0.9568	22.4238	23.7834	24.7347	23.6390
110128	1.2619	0.8891	24.4596	25.7839	25.4190	25.2198
110129	1.5740	0.9020	23.3631	25.9625	30.0444	26.3986
110130	0.9401	0.7861	18.7549	19.1284	20.4349	19.4669
110132	0.9900	0.7861	19.2307	20.2502	21.2642	20.2556
110135	1.2746	0.7861	20.4412	22.5346	24.0945	22.4857
110136	***	*	15.8573	18.8212	*	17.2827
110142	0.9496	0.8046	18.1980	21.3935	21.6286	20.4908
110143	1.4032	0.9813	27.7055	28.6583	29.9139	28.7963
110146	1.0451	0.9089	23.9067	27.0987	29.0193	26.6351
110149	***	*	27.1477	28.4040	*	27.8380
110150	1.3058	0.9813	22.6624	25.3742	26.9884	24.9555
110153	1.1347	0.9568	24.5368	25.7467	29.3305	26.5481
110161	1.5077	0.9813	29.3201	30.4885	31.5001	30.4389
110163	1.4442	0.8667	26.0764	28.2169	27.7679	27.3543
110164	1.6466	0.9749	27.0600	28.8946	30.0145	28.6658
110165	1.3804	0.9813	26.8378	27.0977	28.7902	27.5702
110166	***	*	26.8070	*	*	26.8070
110168	1.8202	0.9813	27.0022	28.5700	29.7774	28.4702
110172	1.3257	0.9813	29.1703	31.1234	31.3999	30.6003
110177	1.7868	0.9599	26.7504	28.8356	29.7079	28.4491
110179	***	*	26.0759	*	*	26.0759
110183	1.2715	0.9813	29.6132	28.6208	28.3505	28.8254
110184	1.2398	0.9813	26.5240	28.3545	29.4071	28.1771
110186	1.3729	0.9020	25.0298	27.4925	28.2880	26.9617
110187	1.2163	0.9813	24.2933	25.2139	26.9638	25.5788
110189	1.1273	0.9813	26.7654	26.1418	26.2799	26.3816
110190	1.0370	0.8102	14.2518	23.3204	24.5224	20.0525
110191	1.3276	0.9813	26.8277	27.7760	30.9481	28.4955
110192	1.3990	0.9813	26.7852	28.8267	30.0843	28.6181

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
110193	***	*	27.3341	27.9161	*	27.6234
110194	0.9359	0.7861	18.4776	19.1920	21.0826	19.6210
110198	1.3957	0.9813	31.7748	31.0557	32.8171	31.8629
110200	1.9226	0.9020	22.3249	24.9236	27.2974	24.7904
110201	1.4598	0.9749	28.2232	31.0841	32.0967	30.4769
110203	0.9675	0.9813	26.8768	29.7888	32.3441	29.6046
110205	1.1514	0.8368	19.7408	22.0207	23.9738	21.9564
110209	0.5324	0.7861	19.0450	21.1534	21.2428	20.5456
110212	1.2000	0.8204	40.5120	*	*	40.5120
110214	***	*	*	37.1450	*	37.1450
110215	1.2911	0.9813	25.7886	27.5566	29.5238	27.7250
110219	1.4241	0.9813	27.0362	28.8814	32.2603	29.4317
110220	***	*	*	37.5741	*	37.5741
110221	***	*	*	28.0500	*	28.0500
110222	***	*	*	35.6189	*	35.6189
110223	***	*	*	*	25.3071	25.3071
110224	***	*	*	*	33.6464	33.6464
110225	1.1627	0.9813	*	*	29.5373	29.5373
110226	1.1705	0.9813	*	*	*	*
110228	0.6858	0.9813	*	*	*	*
120001	1.7954	1.1306	34.7715	34.1385	39.6348	36.0753
120002	1.2128	1.0741	29.9913	32.3784	34.1709	32.1936
120004	1.3302	1.1306	28.6527	30.0668	31.3555	30.0081
120005	1.3171	1.0741	29.3405	31.1985	33.6942	31.4363
120006	1.2693	1.1306	31.2285	31.6785	34.2231	32.3972
120007	1.7199	1.1306	30.4247	30.2473	30.8773	30.5122
120010	1.8852	1.1306	30.1659	29.5714	30.8526	30.1903
120011	1.5612	1.1306	34.1643	37.1792	39.1941	36.8951
120014	1.2810	1.0741	28.6416	30.3463	30.9839	30.0257
120016	***	*	19.6039	*	*	19.6039
120019	1.1328	1.0741	30.3809	30.4257	33.0114	31.2831
120022	1.9275	1.1306	26.6100	29.9527	32.5326	29.5914
120025	***	*	30.2367	*	*	30.2367
120026	1.4060	1.1306	30.3293	32.4566	34.2244	32.4725
120027	1.3547	1.1306	28.6717	28.7905	29.5825	29.0488
120028	1.3018	1.1306	30.3794	32.4847	34.0451	32.3420
120029	***	*	*	*	44.6382	44.6382
130002	1.4431	0.8707	23.6078	24.7871	24.7266	24.4032
130003	1.3970	0.9615	27.6345	28.6158	28.6136	28.2894
130005	***	*	25.7523	*	*	25.7523
130006	1.7752	0.9497	25.3221	27.2158	28.0048	26.8675
130007	1.8212	0.9497	24.9562	28.7246	30.4958	27.9567
130013	1.3847	0.9497	27.9209	30.9609	36.1570	31.7470
130014	1.2226	0.9497	24.3885	27.2543	27.5936	26.3567
130018	1.7059	0.9273	26.4125	27.3439	28.4041	27.3783
130021	***	*	16.1658	*	*	16.1658
130024	1.1822	0.8493	23.3347	23.6212	24.8035	23.9293
130025	1.2426	0.7818	20.1452	21.1998	22.7962	21.4285
130028	1.4835	0.9187	26.3443	27.2195	28.4934	27.4962
130049	1.6067	1.0227	26.9749	27.3597	29.0185	27.8229
130062	***	*	20.6642	25.6467	29.1925	24.9270
130063	1.3933	0.9497	22.5904	26.0955	27.7607	25.3662
130065	1.9742	0.9273	*	21.9792	30.4547	26.6750
130066	2.0724	0.9674	*	*	28.9883	28.9883
130067	0.5728	0.9273	*	*	21.3867	21.3867
130068	2.6786	0.9674	*	*	*	*
140001	1.3394	0.8715	22.3170	22.3001	22.2003	22.2726
140002	1.3523	0.8983	24.6954	27.0165	27.4779	26.4101
140007	1.4485	1.0588	28.3482	30.7378	31.4024	30.1866
140008	1.5341	1.0588	28.5297	29.1767	31.8008	29.7872
140010	1.5341	1.0588	35.1024	31.8806	40.1360	35.1264
140B103	***	1.0583	35.1024	31.8806	40.1360	35.1264
140011	1.1265	0.8346	22.4091	23.8575	25.8864	24.1284
140012	1.1597	1.0472	28.6564	29.0336	31.8213	29.7772
140013	1.4752	0.9385	23.3065	23.9269	25.0951	24.0826
140015	1.4276	0.8983	23.0600	24.4687	24.6409	24.0661
140016	1.0141	*	18.1242	*	*	18.1242

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
140018	1.4713	1.0588	27.7548	26.3533	30.7398	28.2267
140019	0.9076	0.8346	18.9228	21.3438	22.3179	20.8686
140024	***	*	17.5249	*	*	17.5249
140026	1.1369	0.8661	23.0470	25.9669	26.0493	25.0156
140029	1.5629	1.0588	28.6565	30.2688	36.7722	31.7994
140030	1.5605	1.0588	29.7771	30.2776	31.6822	30.5819
140032	1.2251	0.8983	24.0573	26.7310	27.5367	26.1095
140033	0.7592	1.0472	25.6068	27.9993	29.5256	27.5611
140034	1.1489	0.8983	23.0033	24.0470	24.4653	23.8461
140040	1.2143	0.9226	22.2969	23.2293	24.5589	23.3454
140043	1.2831	0.8894	26.7996	27.3469	29.8633	28.0422
140045	***	*	20.6548	*	*	20.6548
140046	1.5047	0.8983	23.2127	24.7334	25.6230	24.5835
140048	1.2906	1.0588	28.2222	29.3877	30.6686	29.4175
140049	1.4765	1.0588	27.4009	29.0976	30.8617	29.2268
140051	1.5046	1.0588	27.7901	30.9696	32.1730	30.2784
140052	1.2926	0.8983	23.5662	25.9617	26.9907	25.5002
140053	1.8975	0.8943	24.8455	27.4518	28.4513	26.9029
140054	1.4482	1.0588	31.8564	33.1406	34.2378	33.0651
140058	1.2520	0.8983	22.8423	24.6058	25.2568	24.2526
140059	1.0745	0.8983	22.4652	22.6743	21.6230	22.2390
140061	***	*	20.8063	*	*	20.8063
140062	1.3499	1.0588	34.7704	34.1230	36.8271	35.2283
140063	1.4161	1.0588	27.8306	28.6559	30.5465	28.9957
140064	1.1956	0.9226	22.0407	23.8639	25.7551	23.9579
140065	1.4090	1.0588	29.4678	30.1856	31.5510	30.3798
140066	1.0931	0.8983	21.9771	22.1524	22.0225	22.0498
140067	1.8440	0.9385	25.3986	28.3506	29.8982	27.9265
140068	1.2030	1.0588	27.3956	28.3938	26.7166	27.5195
140075	1.3290	1.0588	27.9325	26.2626	35.9507	29.4588
140077	1.0118	0.8983	19.1363	20.3999	21.6468	20.4044
140080	1.4044	1.0588	23.2575	28.8791	29.9067	27.0464
140082	1.5865	1.0588	25.6645	28.3429	31.0516	28.3204
140083	0.9167	1.0588	26.2972	26.8919	27.2189	26.8114
140084	1.3044	1.0472	29.2515	30.5036	30.7251	30.1522
140088	1.9227	1.0588	32.4978	30.5450	32.6866	31.9069
140089	1.2571	0.8346	23.3401	24.1066	24.9120	24.1080
140091	1.7600	0.9316	26.8518	27.8536	28.2095	27.6630
140093	1.2233	0.9245	25.3127	28.3298	28.6709	27.3188
140094	1.0741	1.0588	27.9273	27.3841	28.7647	28.0321
140095	1.1840	1.0588	27.6799	28.7617	29.7385	28.6923
140100	1.4114	1.0472	37.0820	41.3374	37.2961	38.7112
140101	1.2087	1.0588	28.5365	29.4081	28.9723	28.9915
140103	1.1471	1.0588	23.3258	23.6406	24.0926	23.6947
140105	2.4503	1.0588	27.4531	29.5274	29.6590	28.8385
140109	1.2813	*	19.5675	*	*	19.5675
140110	1.1010	1.0472	27.9844	28.6364	30.3432	29.0082
140113	1.6263	0.9316	26.7969	29.5452	30.2542	28.8718
140114	1.4998	1.0588	28.3014	28.2151	29.8316	28.7971
140115	1.1211	1.0588	25.1498	26.0383	25.4576	25.5430
140116	1.2804	1.0588	31.9902	34.5537	34.3876	33.6671
140117	1.5489	1.0588	26.8802	27.7201	30.9679	28.4756
140118	1.5337	1.0588	29.7570	32.5518	33.1987	31.8004
140119	1.8437	1.0588	36.1419	34.2118	32.2185	34.0199
140120	1.2654	0.9385	22.7375	23.9724	25.9275	24.2583
140122	1.4644	1.0588	28.4188	30.5653	30.2888	29.7419
140124	1.2540	1.0588	36.1327	35.7563	38.2191	36.7032
140125	1.1728	0.8983	20.4014	22.7571	26.5801	23.2037
140127	1.5916	0.9484	24.1658	25.6668	27.8363	25.8841
140130	1.2387	1.0472	29.5247	32.6209	32.5425	31.6158
140133	1.2958	1.0588	28.0339	31.0269	30.3259	29.7606
140135	1.4316	0.8346	22.3264	23.3196	24.6645	23.4680
140137	1.0331	0.8983	21.4699	23.4174	31.4349	24.5880
140141	***	*	21.7872	*	*	21.7872
140143	1.1598	1.0472	26.2954	27.4499	26.1126	26.6046
140145	1.0894	0.8983	23.4608	26.0875	25.2040	24.9380
140147	1.1114	0.8346	19.8541	21.0686	21.1817	20.6906

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
140148	1.7334	0.8943	24.7031	25.5677	27.0038	25.7606
140150	1.7108	1.0588	35.2711	52.0970	35.5951	40.9580
140151	0.8038	1.0588	23.4879	27.0312	26.0825	25.5372
140152	1.1775	1.0588	27.6086	30.2209	29.8647	29.2051
140155	1.3616	1.0472	28.9724	29.5734	32.7960	30.4671
140158	1.3843	1.0588	27.0986	27.3721	30.4445	28.3050
140160	1.2234	0.9704	24.5373	25.8684	27.6905	26.0399
140161	1.0989	1.0472	23.1647	25.2898	28.8266	25.7893
140162	1.5902	0.9484	27.4471	29.4121	32.1810	29.6162
140164	1.8223	0.8983	23.7457	24.6009	25.9726	24.8076
140165	***	*	16.6304	*	*	16.6304
140166	1.1619	0.8346	23.1005	26.4800	26.2875	25.2809
140167	1.1608	0.8346	22.8911	22.8703	24.9904	23.5836
140172	1.3652	1.0588	29.8568	32.1220	33.0926	31.7168
140174	1.5704	1.0588	27.8131	30.5905	31.2231	29.9167
140176	1.2291	1.0588	31.3490	32.9794	32.6145	32.3408
140177	0.9037	1.0588	22.5610	26.4340	25.5725	24.9321
140179	1.2694	1.0588	27.6376	29.3657	30.2944	29.1090
140180	1.1722	1.0588	28.3629	27.8887	29.1352	28.4623
140181	1.1314	1.0588	25.0101	25.0226	27.6835	25.9072
140182	1.5031	1.0588	28.2211	30.1755	32.8972	30.2922
140184	1.2951	0.8346	21.1802	25.2327	26.6104	24.4280
140185	1.4648	0.8983	23.8531	25.2423	26.5398	25.2116
140186	1.5398	1.0472	30.6951	29.8022	30.7212	30.4067
140187	1.5456	0.8983	23.2892	24.8332	25.5873	24.5668
140189	1.1669	0.8346	23.7198	22.5965	24.7013	23.6837
140190	***	*	19.8296	*	*	19.8296
140191	1.3318	1.0588	25.8678	28.5836	31.9943	28.7069
140197	1.2406	1.0588	23.0684	24.0463	24.9103	23.9565
140199	1.0545	*	22.0315	*	*	22.0315
140200	1.4401	1.0588	26.3379	28.8435	30.6641	28.5880
140202	1.5516	1.0472	29.7870	32.7915	32.9433	31.9581
140206	1.2638	1.0588	30.6561	29.7953	29.6275	30.0202
140207	1.2121	1.0588	24.1048	26.0535	28.2262	26.0084
140208	1.6599	1.0588	29.4708	29.5380	31.4035	30.1416
140209	1.5570	0.9385	24.5376	26.3230	29.7965	26.7808
140210	1.0667	0.8346	19.2640	20.6954	19.2053	19.6895
140211	1.3090	1.0588	29.7054	30.3286	31.4539	30.5683
140213	1.2470	1.0588	30.2945	31.6926	32.1031	31.3688
140217	1.5498	1.0588	31.5324	32.1277	32.9404	32.2271
140223	1.4787	1.0588	30.4923	31.7267	33.5083	31.9322
140224	1.3760	1.0588	28.2177	29.6181	31.2237	29.6765
140228	1.5681	0.9805	25.6419	27.9456	28.2855	27.2863
140231	1.4308	1.0588	30.6410	30.0236	34.8291	31.8587
140233	1.6653	1.0472	28.6305	29.7093	31.5168	29.9830
140234	1.0454	0.8661	23.6928	24.5476	25.7353	24.6552
140239	1.5950	0.9805	29.0092	31.1879	31.0918	30.4218
140240	1.4146	1.0588	28.7310	31.5637	32.7986	30.9712
140242	1.5032	1.0588	32.0522	34.6120	35.2351	33.9225
140250	1.2378	1.0588	28.5971	29.6305	31.2533	29.8441
140251	1.3940	1.0588	27.1687	28.0622	28.3598	27.8740
140252	1.4020	1.0588	33.3351	34.4268	35.8762	34.5480
140258	1.5174	1.0588	30.2639	34.2333	33.0093	32.5353
140275	1.3123	0.8894	26.1473	27.8186	28.5064	27.4339
140276	1.8647	1.0588	29.8325	31.6359	32.1048	31.2217
140280	1.4651	0.8894	23.4447	24.9401	26.6536	24.9140
140281	1.7584	1.0588	30.4838	33.3903	35.6589	33.1771
140285	***	*	20.7576	*	*	20.7576
140286	1.1539	1.0588	29.1543	30.3237	32.0048	30.4851
140288	1.5228	1.0588	29.3988	31.5197	31.5944	30.8910
140289	1.3067	0.8983	22.6211	23.8452	25.6847	24.0649
140290	1.3576	1.0588	31.7341	31.8135	32.5247	32.0531
140291	1.6115	1.0472	29.8958	31.9052	33.8706	31.9796
140292	1.1022	1.0588	27.6285	28.5094	30.6917	28.8381
140294	1.1266	0.8346	23.4503	24.0750	26.1595	24.6196
140300	1.1884	1.0588	34.8568	35.1494	42.5240	37.4107
140301	1.1568	1.0588	31.7073	49.9507	39.4295	38.1755

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
140303	2.2073	1.0588	*	29.6470	*	29.6470
150001	1.1331	0.9718	29.6844	28.9075	31.8089	30.1191
150002	1.4417	1.0472	25.0063	26.6222	26.6481	26.6696
150003	1.7490	0.8677	25.3458	26.7585	26.9771	26.3734
150004	1.4753	1.0472	26.8458	28.7336	30.9626	28.8237
150005	1.2795	0.9718	27.2369	29.5371	30.5367	29.1856
150006	1.3979	0.9504	26.4062	25.6265	27.1364	26.4180
150007	1.3720	0.9464	26.6073	29.4971	30.0500	28.8176
150008	1.3865	1.0472	26.6928	27.5703	27.0525	27.1187
150009	1.4332	0.9030	22.2147	25.4496	25.7616	24.5212
150010	1.4963	0.9464	26.8523	27.2272	28.4118	27.4601
150011	1.2451	0.9590	24.3490	25.3178	26.7686	25.4614
150012	1.5620	0.9643	27.3029	30.0348	31.2282	29.5432
150013	***	*	21.8465	*	*	21.8465
150015	1.3250	0.8899	26.2434	28.0931	27.3811	27.2243
150017	1.8561	0.9041	25.2342	26.3973	26.3379	26.0051
150018	1.7221	0.9541	26.3289	27.3689	29.1137	27.6515
150021	1.8096	0.9041	29.6967	28.9196	30.0030	29.5366
150022	1.0788	0.8727	22.6773	23.1041	23.8971	23.1999
150023	1.5637	0.9590	23.7159	26.9095	27.7520	25.8891
150024	1.4818	0.9718	27.1589	28.1655	28.4170	27.8897
150026	1.3161	0.9541	28.1127	28.6517	30.4967	29.1723
150027	1.0482	*	17.4862	*	*	17.4862
150029	1.4657	0.9643	26.9680	28.7187	29.9307	28.4271
150030	1.1967	0.9590	26.9534	29.1493	29.3588	28.5143
150033	1.5576	0.9718	27.9995	28.6838	29.7744	28.8059
150034	1.4561	1.0472	26.0465	28.6429	28.0434	27.6127
150035	1.5977	0.9242	26.6620	26.9700	27.8904	27.1979
150037	1.3217	0.9718	28.5451	31.0935	29.0161	29.5237
150038	1.1328	0.9718	28.8054	29.3156	33.0112	30.3936
150042	1.3921	0.8824	23.0102	22.8786	25.1403	23.6714
150044	1.3927	0.9030	23.7066	25.2137	25.2685	24.7693
150045	1.0745	0.9041	25.2225	26.9818	27.5340	26.5867
150046	1.4882	0.8824	21.9369	24.5593	26.5876	24.4158
150047	1.7159	0.9041	25.8348	25.5194	25.8497	25.7351
150048	1.3899	0.9661	27.1817	27.1233	28.1525	27.5023
150049	1.3604	*	22.3370	*	*	22.3370
150051	1.6346	0.9590	23.7061	26.5655	28.9157	26.4848
150052	1.0751	*	20.6339	*	*	20.6339
150056	1.9446	0.9718	28.2842	28.8727	29.3500	28.8453
150057	2.0988	0.9718	24.8605	28.9529	30.3287	27.8807
150058	1.5711	0.9643	27.5341	29.1444	29.1255	28.6425
150059	1.5551	0.9718	28.5715	31.4987	31.3362	30.4971
150060	***	*	24.8544	*	*	24.8544
150061	1.1275	0.8569	22.2822	21.3711	22.6746	22.1018
150062	1.1339	*	24.6088	*	*	24.6088
150064	1.2000	0.8569	23.7707	25.4987	28.7978	26.0980
150065	1.2625	0.9590	25.9461	27.9283	30.2053	27.9985
150069	1.1757	0.9661	25.2656	26.2028	26.0909	25.8564
150072	1.1657	0.8674	20.5111	21.2120	21.7644	21.1633
150074	1.4427	0.9718	25.2586	25.9321	28.5655	26.5901
150075	1.0975	0.9041	24.0745	25.1568	25.7245	24.9787
150076	1.2881	0.9504	28.1874	29.3249	30.1120	29.2167
150079	1.1099	*	21.4067	*	*	21.4067
150082	1.6825	0.8569	25.5860	28.3494	26.4544	26.8048
150084	1.8395	0.9718	29.3905	31.1720	33.1784	31.1870
150086	1.1722	0.9661	23.9404	25.1992	26.6745	25.3042
150088	1.2748	0.9590	23.6253	27.2103	29.1509	26.6306
150089	1.6023	0.8569	25.0449	24.7233	24.8045	24.8596
150090	1.6407	1.0472	26.2899	30.4835	30.6412	29.1401
150091	1.1638	0.9041	30.6209	30.4234	32.1627	31.1005
150097	1.1290	0.9718	25.0367	27.7468	29.1359	27.3220
150100	1.6877	0.8569	24.3530	25.7997	26.9724	25.6239
150101	1.0665	0.9041	29.1657	29.0301	30.5475	29.5654
150102	1.0330	0.9242	24.5923	25.7424	25.8742	25.4603
150104	1.0856	0.9718	25.5872	28.2552	28.7788	27.5177
150106	1.0158	*	20.9387	*	*	20.9387

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
150109	1.4641	0.8677	23.5865	25.3367	26.8464	25.2376
150112	1.4978	0.9590	26.5643	28.0068	29.8540	28.1787
150113	1.2888	0.9590	24.8760	24.7960	25.9814	25.2159
150115	1.4230	0.8569	19.3411	22.0747	22.5793	21.2670
150122	1.3185	*	26.0173	*	*	26.0173
150124	***	*	21.3933	*	*	21.3933
150125	1.5103	1.0472	26.7666	27.6535	29.3596	27.9342
150126	1.4164	1.0472	26.9887	28.9454	29.4300	28.4467
150128	1.4409	0.9718	26.4976	28.7810	29.5008	28.2807
150129	1.1548	0.9718	29.9099	29.7398	31.4317	30.3985
150130	1.6136	*	21.7400	*	*	21.7400
150132	***	*	25.6257	27.6560	*	26.6249
150133	1.2457	0.9041	22.7292	25.1322	24.2538	24.0313
150134	1.0198	0.9030	23.8525	26.3249	21.6740	23.7590
150136	***	*	26.2704	*	*	26.2704
150146	1.1370	0.9041	29.3383	29.5256	30.3343	29.7676
150147	1.5120	1.0472	22.8456	27.2339	26.1646	25.6998
150149	1.0014	0.8569	23.6360	23.7026	24.9629	24.1402
150150	1.3167	0.9041	25.5331	27.0542	26.7700	26.4920
150151	***	*	38.1445	*	*	38.1445
150152	***	*	44.7145	*	*	44.7145
150153	2.4172	0.9718	*	32.1022	35.0617	33.7428
150154	2.5712	0.9718	*	29.8514	29.8894	29.8711
150155	***	*	*	45.0121	*	45.0121
150156	***	*	*	25.9681	*	25.9681
150157	1.6761	0.9718	*	*	32.3106	32.3106
150158	1.2402	0.9718	*	*	*	*
150160	2.0073	0.9718	*	*	*	*
150161	1.4755	0.9718	*	*	*	*
150162	1.7836	0.9718	*	*	*	*
150163	1.1054	0.9030	*	*	*	*
160001	1.2039	0.9223	25.1220	24.5108	25.7255	25.1337
160005	1.2097	0.8476	21.8949	23.1034	24.7755	23.2878
160008	1.0516	0.8476	20.7200	22.1402	22.4758	21.7846
160013	1.2974	0.8655	23.7163	24.0956	24.4099	24.0734
160014	***	*	20.5882	*	*	20.5882
160016	1.5636	0.9223	23.3619	24.5338	27.1460	24.9575
160020	1.1531	*	19.5554	*	*	19.5554
160024	1.5654	0.9158	26.2392	27.4158	29.3756	27.6168
160026	***	*	24.7424	*	*	24.7424
160028	1.3092	0.9474	26.2948	27.8535	30.0576	28.1943
160029	1.6382	0.9424	27.9277	28.7324	30.6687	29.0931
160030	1.3868	1.0016	26.7068	28.7786	30.9415	28.8521
160031	0.7988	*	19.7368	*	*	19.7368
160032	1.0669	0.8711	23.4727	25.4662	26.2935	25.1093
160033	1.7485	0.8894	24.6768	26.5315	27.2060	26.1337
160034	1.0217	*	19.3503	*	*	19.3503
160039	0.9129	*	22.1180	*	*	22.1180
160040	1.2906	0.8720	23.9053	25.9032	26.8110	25.5671
160045	1.6881	0.8685	25.4153	26.6463	27.5289	26.5339
160047	1.3936	0.9474	25.2072	26.0227	28.1280	26.4469
160048	***	*	19.5831	*	*	19.5831
160050	1.0566	*	24.5402	*	*	24.5402
160057	1.2590	0.9138	23.0937	25.1272	25.6274	24.6663
160058	1.9710	0.9424	27.1646	28.4167	28.9924	28.2025
160064	1.6011	0.9114	28.6139	28.7668	28.4209	28.5968
160066	0.9354	*	22.7709	*	*	22.7709
160067	1.3637	0.8720	23.4060	24.8137	26.0243	24.7721
160069	1.5286	0.8876	25.3402	27.4473	27.6157	26.8150
160079	1.4774	0.8685	23.7234	24.7372	26.1618	24.8787
160080	1.2832	0.8894	23.1837	25.8252	27.2370	25.4033
160081	***	*	23.1930	*	*	23.1930
160082	1.7698	0.9158	26.4398	27.4718	28.7831	27.5581
160083	1.6593	0.9158	28.2193	27.3004	28.3921	27.9725
160089	1.2887	0.9138	22.6551	23.2149	23.2888	23.0562
160091	***	*	17.9862	*	*	17.9862
160101	1.0750	0.9158	25.1000	25.0503	25.4740	25.2122

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
160104	1.6546	0.8894	24.9134	28.1891	29.8126	27.8799
160110	1.5341	0.8720	24.9434	26.6633	28.8134	26.8749
160112	1.2895	0.8476	23.0672	24.7957	25.2886	24.4326
160117	1.3823	0.8876	25.0278	25.4659	27.3927	25.9740
160118	***	*	19.7764	*	*	19.7764
160122	1.0947	0.8476	22.5872	23.9177	24.4996	23.6844
160124	1.1525	0.8476	23.1690	22.5482	24.3063	23.3383
160126	1.0265	*	19.8323	*	*	19.8323
160146	1.3905	0.9083	22.9897	22.6949	24.8485	23.4694
160147	1.2941	0.9223	26.6438	28.6303	29.8992	28.4676
160153	1.7364	0.9083	28.9881	29.9378	30.6173	29.8520
160154	1.1302	*	*	*	*	*
160155	1.7147	0.8894	*	*	*	*
170001	1.1457	0.7980	21.9131	23.1260	23.8863	22.9705
170006	1.3231	0.8967	21.9019	24.2068	27.1033	24.4549
170009	1.0518	0.9319	29.2588	30.9025	29.6386	29.9250
170010	1.2444	0.7980	24.0008	23.9707	25.5573	24.5518
170012	1.6127	0.8718	24.7392	26.1367	27.1195	25.9606
170013	1.6234	0.8718	25.0419	25.2476	26.7124	25.6577
170014	1.0200	0.9319	23.5960	23.8135	24.2322	23.8856
170015	***	*	20.2368	*	*	20.2368
170016	1.6402	0.8557	25.9482	25.8061	26.7536	26.1671
170017	1.0743	0.8939	24.7771	26.9657	27.2925	26.3737
170019	1.1990	*	22.0251	*	*	22.0251
170020	1.5974	0.8718	23.1800	23.2757	24.1149	23.5243
170022	1.1485	*	22.2878	*	*	22.2878
170023	1.4198	0.8718	23.9808	24.0561	23.9812	24.0054
170027	1.3961	0.7980	22.5103	23.1766	23.4037	23.0169
170033	1.3489	0.8718	20.7864	21.9709	24.1882	22.2852
170039	0.9451	0.8939	21.5203	26.9852	26.0952	24.6299
170040	1.9800	0.9319	28.2856	28.4458	30.2468	29.0256
170049	1.5227	0.9319	24.7895	25.2070	26.4086	25.4876
170052	***	*	18.5291	*	*	18.5291
170058	1.0973	0.9319	23.3398	22.9210	26.5949	24.2599
170068	1.2243	0.9152	22.6087	23.0635	23.8812	23.1883
170070	***	*	16.0162	*	*	16.0162
170074	1.2229	0.7980	21.0565	23.7829	23.0567	22.6765
170075	0.8299	0.7980	16.5444	19.7760	19.9351	18.7474
170085	0.6104	*	*	*	*	*
170086	1.5806	0.8557	24.0812	26.1362	26.3615	25.5525
170093	***	*	16.5553	*	*	16.5553
170094	0.9369	0.7980	21.3887	21.5295	16.5136	19.6903
170098	***	*	20.1242	*	*	20.1242
170103	1.2869	0.8939	22.8707	23.8042	24.2003	23.6452
170104	1.4622	0.9319	26.9671	26.2990	27.6211	26.9584
170105	1.0944	0.7980	21.4422	21.9606	22.7412	22.0343
170109	1.0365	0.9319	23.2626	23.1088	23.8515	23.4041
170110	0.8838	0.7980	22.9195	23.3260	23.9572	23.4236
170114	0.9064	*	18.9158	*	*	18.9158
170120	1.3860	0.8967	21.0499	22.0253	22.2805	21.7560
170122	1.6825	0.8939	25.3982	26.6605	28.7175	26.8262
170123	1.6951	0.8939	27.2239	27.6653	27.0843	27.3131
170133	1.0455	0.9319	22.9309	23.1226	25.2301	23.8079
170137	1.2778	0.7980	23.8862	24.7096	25.3395	24.6697
170142	1.4000	0.8452	22.5778	23.9527	24.6019	23.7457
170143	***	*	20.4459	*	*	20.4459
170144	***	*	24.6259	*	*	24.6259
170145	1.0844	0.7980	21.5756	23.2162	23.3967	22.7065
170146	1.5046	0.9319	29.1358	29.8858	29.0720	29.3567
170147	***	*	21.4753	22.4973	24.3268	22.5630
170150	1.1567	0.8146	18.5744	20.9448	19.6160	19.7250
170166	0.9972	0.7980	19.2842	21.0762	22.6968	21.0440
170175	1.4183	0.8718	23.9304	25.6281	26.7229	25.4235
170176	1.5941	0.9319	26.2366	27.2332	29.0735	27.5811
170180	***	*	25.1368	32.5010	*	27.5335
170182	1.4404	0.9319	25.7443	27.3503	28.9710	27.3812
170183	1.9426	0.8939	24.5539	25.8340	26.1890	25.5209

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
170185	1.2377	0.9319	26.7797	27.8139	28.1780	27.6778
170186	2.6627	0.8939	31.7896	32.8392	30.2613	31.6196
170187	1.4872	0.7980	23.3702	22.8493	24.1461	23.4565
170188	1.9667	0.9319	29.9751	30.6844	32.2573	31.0137
170190	1.0160	0.8452	22.8729	22.9540	26.2625	24.0473
170191	1.7207	0.7980	21.3069	22.1197	24.3813	22.6600
170192	1.9119	0.8939	27.9704	26.2724	27.7421	27.3099
170193	1.4210	0.8718	24.7429	20.6821	24.8531	23.2189
170194	1.0835	0.9319	27.9903	29.9014	27.6989	28.5239
170195	2.2763	0.9319	*	30.1001	29.5947	29.8108
170196	2.3666	0.8939	*	*	32.1832	32.1832
180001	1.2557	0.9661	25.4217	27.6917	29.7423	27.6443
180002	1.0602	0.8074	22.9727	25.7862	26.5488	25.1142
180004	1.0972	0.7810	19.5437	22.0797	20.8805	20.8284
180005	1.1194	0.8725	24.5561	24.9779	25.6159	25.0807
180006	***	*	14.8011	*	*	14.8011
180007	1.5249	0.9003	22.7606	25.7042	27.1924	25.2359
180009	1.7050	0.8879	25.3837	26.4101	27.3228	26.4316
180010	1.8883	0.9003	24.7256	25.6153	27.7600	26.0458
180011	1.5427	0.8797	22.7364	25.5463	24.9909	24.4168
180012	1.4909	0.9030	24.6642	25.6000	26.7279	25.6690
180013	1.5074	0.9364	22.9512	23.7075	24.8125	23.8157
180016	1.3302	0.9030	23.1832	24.8408	24.7091	24.2487
180017	1.3231	0.7979	20.8630	21.8885	21.9715	21.5934
180018	1.3148	0.7810	19.0992	20.9857	23.3035	21.1384
180019	1.0932	0.9661	24.1342	24.0283	24.6279	24.2639
180020	1.0481	0.7810	21.9494	24.6953	25.9975	24.2711
180021	0.9698	0.7810	18.5966	20.7950	22.0740	20.5368
180024	1.1161	0.9030	32.1824	31.1159	26.3532	29.7120
180025	1.1421	0.9030	19.1543	22.6897	28.5935	23.5037
180026	1.0693	*	18.2120	*	*	18.2120
180027	1.2468	0.8096	23.8763	20.8303	21.7639	22.0496
180028	0.9153	*	24.7967	*	*	24.7967
180029	1.3898	0.8797	23.0536	25.6479	26.1528	24.9999
180035	1.6203	0.9661	29.8438	31.0794	32.8461	31.2815
180036	1.2418	0.8879	25.1154	25.2972	25.6959	25.3664
180037	1.3241	0.9030	25.7361	26.3132	27.8506	26.6118
180038	1.5448	0.8698	24.6348	26.0440	26.9752	25.9113
180040	1.9692	0.9030	26.2125	27.9979	28.5162	27.6103
180043	1.1554	0.7810	19.0617	20.9326	20.6439	20.2180
180044	1.7146	0.8725	23.0971	24.4569	25.8060	24.4869
180045	1.3291	0.9661	25.8349	27.4732	29.4127	27.6339
180046	0.9468	0.9003	27.2244	27.1034	27.0962	27.1405
180047	***	*	21.8036	*	*	21.8036
180048	1.2971	0.9030	21.6571	23.9230	24.3696	23.3120
180049	1.4467	0.8797	23.3407	22.4769	24.3699	23.3961
180050	1.1550	0.7810	22.6473	26.3604	25.9557	24.9976
180051	1.2878	0.8219	21.3312	23.5299	24.3916	23.1293
180053	0.9914	0.7810	19.1578	21.3044	22.1921	20.9808
180055	1.1922	*	20.7237	*	*	20.7237
180056	1.1773	0.8465	22.8910	24.3074	24.5326	23.9077
180063	1.1034	*	17.9741	*	*	17.9741
180064	1.1693	0.8124	16.2638	17.1009	20.1799	17.8239
180066	1.0839	0.9364	24.9543	22.2713	23.7860	23.6485
180067	2.0260	0.9003	25.4080	26.0238	27.9852	26.5262
180069	1.0876	0.8725	22.3673	26.3701	26.6714	25.1966
180070	1.1689	0.8050	20.1308	20.6741	20.2189	20.3433
180078	1.1526	0.8725	26.2636	27.6806	28.2762	27.4283
180079	1.1914	0.8069	19.7791	20.2100	23.6005	21.2540
180080	1.2789	0.8013	21.7380	21.5818	23.7788	22.3758
180087	1.2564	0.7810	18.4331	20.8841	22.0302	20.4642
180088	1.6692	0.9030	27.5767	28.0916	28.6107	28.1051
180092	1.1840	0.9003	22.5679	23.7909	23.7866	23.3989
180093	1.6493	0.8123	20.5422	20.5807	21.4392	20.8528
180095	1.0472	0.7810	17.9677	17.9146	21.5639	18.9610
180101	1.1640	0.9003	25.4796	27.4506	28.1621	27.0742
180102	1.5933	0.8096	18.4388	21.0896	25.2343	21.3176

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
180103	2.1748	0.9003	26.9407	28.4583	28.1734	27.8598
180104	1.5693	0.8096	24.9441	25.6157	25.9689	25.5126
180105	0.8863	0.7810	19.7615	21.6002	23.1917	21.5276
180106	0.8981	0.7810	17.8020	20.2884	20.7220	19.6713
180115	0.9198	0.7810	20.9831	20.5539	20.3089	20.6170
180116	1.2129	0.8346	22.7353	23.5354	25.8927	24.0625
180117	0.9573	0.7810	21.1854	22.8469	24.7378	22.8812
180124	1.3102	0.9364	23.1917	24.8292	25.4664	24.5483
180127	1.3502	0.9030	23.4765	24.6774	26.3947	24.8368
180128	0.9285	0.7810	20.8406	22.6056	23.8144	22.4361
180130	1.6785	0.9030	26.0278	27.8900	29.1712	27.7427
180132	1.4705	0.8797	23.7652	24.5105	25.3789	24.5776
180134	0.9988	*	18.6779	*	*	18.6779
180138	1.2338	0.9030	27.3400	28.1901	28.6871	28.0932
180139	0.9711	0.7810	23.5363	23.3569	24.7575	23.8896
180141	1.8039	0.9030	25.3042	25.3357	27.5912	26.1155
180143	1.6427	0.9003	25.1613	28.1924	30.8734	28.2381
180144	***	*	*	29.5052	*	29.5052
180147	***	*	*	*	31.1615	31.1615
180148	***	*	*	*	30.1250	30.1250
180149	0.9785	0.7810	*	*	*	*
190001	1.1366	0.7586	19.7516	22.1394	22.1569	21.3062
190002	1.6414	0.8323	22.0056	23.3368	24.6984	23.3292
190003	1.4785	0.8323	23.4977	25.8294	26.7844	25.3504
190004	1.5564	0.7976	23.3290	25.3473	25.0803	24.6173
190005	4.8105	0.8712	22.3208	22.6029	24.2899	23.0169
190006	1.4684	0.8323	22.2467	22.7979	24.8836	23.2631
190007	1.1753	0.7586	19.7528	21.8205	23.1426	21.5670
190008	1.7624	0.7976	24.0111	24.6074	26.3638	24.9678
190009	1.2890	0.7978	19.8404	21.1005	24.0696	21.5285
190010	***	*	21.6889	*	*	21.6889
190011	0.9912	0.7869	19.7319	21.4052	21.6991	20.9430
190013	1.4546	0.7784	20.8626	21.4573	23.7333	22.0204
190014	1.1832	0.7586	22.4596	22.7151	22.6405	22.6128
190015	1.3272	0.8712	22.8875	23.7789	25.1767	23.9766
190017	1.3890	0.7773	21.5033	24.5390	24.7537	23.6080
190019	1.7987	0.7978	23.7168	24.0468	25.4624	24.4141
190020	1.2331	0.8010	21.6136	22.1967	23.4602	22.4018
190025	1.3046	0.7586	20.8950	23.5007	24.5024	22.9204
190026	1.6225	0.7978	22.5087	23.7702	24.1556	23.4858
190027	1.6702	0.7784	21.2526	24.3006	26.7132	24.0310
190034	1.2388	0.7775	19.6943	20.7334	21.2130	20.5411
190036	1.6983	0.8712	24.8152	25.4164	25.6551	25.3044
190037	0.6483	0.7784	18.6393	19.4071	20.7271	19.5622
190039	1.6426	0.8712	25.6665	24.4386	25.4003	25.1722
190040	1.3451	0.8712	26.7428	28.6297	28.0169	27.7947
190041	1.4801	0.8552	24.6734	28.5376	28.0050	27.0392
190043	***	*	17.3477	*	*	17.3477
190044	1.3206	0.7847	19.5567	20.9993	21.2604	20.6016
190045	1.6104	0.8712	25.3854	25.8238	27.1996	26.1757
190046	1.4983	0.8712	24.2128	23.8552	24.7370	24.2698
190048	1.0173	*	19.6288	*	*	19.6288
190050	1.0996	0.7630	19.1076	21.0259	20.9142	20.3649
190053	1.1445	0.7687	16.4968	17.9788	18.5819	17.7257
190054	1.3646	0.7671	20.1108	23.1471	22.7011	22.0095
190060	1.4954	0.7784	23.6278	23.7393	22.6291	23.3259
190064	1.6406	0.8010	23.3617	23.1358	23.7298	23.4086
190065	1.6036	0.8010	23.7450	22.1880	23.1202	23.0047
190077	0.9332	*	18.8409	*	*	18.8409
190078	1.0556	0.7773	21.3786	22.2431	22.2346	21.9592
190079	1.2228	0.8712	21.2546	24.0985	23.8192	23.0910
190081	0.8766	0.7586	15.6146	20.0121	21.4510	18.9734
190086	1.2998	0.7765	19.8823	22.0610	22.2895	21.4355
190088	1.0983	0.8552	22.3480	23.8562	23.1638	23.1096
190090	1.0644	0.7586	20.2045	23.1241	24.3303	22.5642
190095	***	*	18.0174	*	*	18.0174
190098	1.7671	0.8552	24.6353	25.6854	25.7449	25.3598

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
190099	1.0514	0.8010	20.4597	22.0610	23.2343	21.9199
190102	1.5319	0.8323	25.2267	27.3126	26.9700	26.4749
190106	1.1179	0.7978	21.7228	23.5376	26.6227	23.8316
190109	1.2697	*	18.6524	*	*	18.6524
190111	1.6595	0.8552	24.4998	25.5729	26.5722	25.5481
190114	1.0528	0.7586	15.8031	17.2678	19.1586	17.4128
190115	1.2579	0.8552	26.6295	28.2066	26.0797	26.9667
190116	1.1795	0.7671	20.3845	22.3710	23.4013	22.0638
190118	0.9119	0.8552	19.7024	22.8809	21.2580	21.3081
190122	1.3165	0.8010	23.7082	22.0072	22.2371	22.6302
190124	***	*	24.6675	26.0032	27.9484	26.2122
190125	1.5999	0.7869	23.9649	25.5463	24.8256	24.7616
190128	1.1274	0.8010	27.9136	28.3257	29.6682	28.6616
190131	1.2853	0.8010	25.1917	27.8465	28.6795	27.2765
190133	0.8990	0.7688	13.6266	18.2045	22.4311	19.4522
190135	***	*	26.8238	27.7540	30.5646	28.1639
190140	0.9706	0.7621	17.6936	18.9652	23.0485	19.9125
190144	1.1642	0.8552	21.7547	22.9181	23.7875	22.8280
190145	0.9239	0.7676	18.9678	19.9265	20.8579	19.9365
190146	1.5689	0.8712	26.1792	27.4824	28.7200	27.4158
190149	1.0427	*	18.8819	*	*	18.8819
190151	0.9473	0.7586	18.6293	18.7467	18.8391	18.7428
190152	1.5619	0.8712	27.6099	28.1334	30.8512	28.8848
190158	***	*	26.3042	26.4787	30.6450	27.6757
190160	1.6083	0.7869	21.6740	22.9325	24.7822	22.9872
190161	1.2550	0.7784	19.1022	22.6187	22.9035	21.4144
190162	***	*	25.0328	25.2953	*	25.1543
190164	1.1717	0.8198	22.8599	25.2560	26.6207	24.9939
190167	1.2689	0.8323	24.3185	26.4669	25.3283	25.3447
190175	1.3803	0.8712	27.1531	26.0547	27.4256	26.8730
190176	1.7567	0.8712	25.6997	25.8826	26.2596	25.9476
190177	1.7190	0.8712	27.4621	27.7792	28.2751	27.8348
190182	***	*	28.4799	27.1682	29.8656	28.5188
190183	1.1703	0.7976	19.8084	22.6928	22.0119	21.4403
190184	1.0091	0.7765	23.9608	24.9476	24.1626	24.3753
190185	***	*	24.7912	25.6394	28.9759	26.4364
190190	0.9347	0.7747	16.1195	24.3327	26.7043	22.8841
190191	1.3288	0.8323	23.5734	24.1923	26.1628	24.6319
190196	0.9294	0.8323	24.7135	24.0385	25.8472	24.8787
190197	1.3883	0.7869	24.3735	25.8071	26.4825	25.5498
190199	1.0219	0.8010	14.1409	27.3304	32.0194	23.0028
190200	***	*	27.5681	28.8173	27.4781	27.9971
190201	1.2441	0.7784	24.5877	25.1010	24.4563	24.7120
190202	1.3990	0.8010	24.7944	27.6084	29.6612	27.4877
190203	***	*	26.8795	28.1832	29.9753	28.2129
190204	1.5165	0.8712	28.3684	28.1033	30.5140	28.9472
190205	1.6775	0.8323	24.4540	26.6832	28.2484	26.4802
190206	1.5731	0.8712	26.0139	26.7401	29.2371	27.2862
190208	0.8612	0.7586	24.2588	28.7308	27.9908	27.1395
190218	1.1033	0.8552	25.0356	26.7262	28.1039	26.6017
190236	1.4943	0.8552	23.6824	24.7142	26.4614	24.9863
190241	1.2264	0.7976	23.9700	25.2123	25.7906	25.0883
190242	1.1676	0.8010	23.0072	24.8461	25.0035	24.3294
190245	1.7027	0.7869	27.1786	25.5751	26.7642	26.5210
190246	1.6612	0.7747	*	*	22.7833	22.7833
190247	***	*	*	32.7499	*	32.7499
190248	***	*	*	23.2220	*	23.2220
190249	1.8972	0.8010	*	20.0468	25.2523	22.1292
190250	2.1185	0.8712	*	31.5101	33.3302	32.3430
190251	1.2888	0.8010	*	21.4464	23.8389	22.5823
190252	***	*	*	23.6924	*	23.6924
190253	***	*	*	22.8060	23.8037	23.3049
190254	***	*	*	32.9290	*	32.9290
190255	0.7428	0.8323	*	22.2412	16.1593	18.2998
190256	0.8040	0.8712	*	*	25.9577	25.9577
190257	1.6107	0.7647	*	*	26.5505	26.5505
190258	1.0203	0.8552	*	31.3715	26.1141	28.3735

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
190259	1.8072	0.8323	*	*	26.5084	26.5084
190260	***	*	*	*	29.3947	29.3947
190261	1.6813	0.7869	*	*	27.0441	27.0441
190262	***	*	*	*	30.3719	30.3719
190263	2.4748	0.8323	*	*	26.4202	26.4202
190264	***	*	*	*	26.5842	26.5842
190265	0.7095	0.7869	*	*	22.6231	22.6231
190266	1.9424	0.8010	*	*	*	*
190267	1.2028	0.8712	*	*	*	*
190268	1.3593	0.8323	*	*	*	*
190270	1.7939	0.8712	*	*	*	*
190272	1.5530	0.8323	*	*	*	*
190273	1.6476	0.8010	*	*	*	*
200001	1.3864	0.9882	25.1144	25.2542	26.3045	25.5700
200002	1.0776	0.8409	25.7478	25.7212	27.1151	26.1903
200008	1.3373	0.9991	27.4412	27.7137	29.1836	28.1476
200009	1.9781	0.9991	31.1056	30.7510	32.5812	31.4774
200012	1.3475	*	25.7623	*	*	25.7623
200013	***	*	24.4131	*	*	24.4131
200018	1.2583	0.8409	23.6337	23.5632	22.5027	23.1555
200019	1.2478	0.9991	25.1367	25.6649	27.7896	26.2304
200020	1.2349	1.0174	31.7083	32.6436	34.0916	32.8279
200021	1.2526	0.9991	24.5519	27.1381	29.2054	27.0896
200024	1.5917	0.9590	26.0080	27.5410	29.7817	27.8465
200025	1.1475	0.9991	26.0573	26.3124	28.5750	27.0015
200027	***	*	26.3118	*	*	26.3118
200028	***	*	24.3271	*	*	24.3271
200031	1.2583	0.8409	21.9489	21.2370	22.2151	21.8012
200032	1.1121	0.8875	25.5227	26.3322	26.8993	26.2493
200033	1.8746	0.9882	28.6479	29.3108	31.7007	29.9421
200034	1.3358	0.9590	26.2926	27.0582	27.0103	26.8004
200037	1.2367	0.8409	23.2333	24.1732	24.9418	24.1299
200039	1.3017	0.9590	25.1196	25.1179	26.6409	25.6399
200040	1.2319	0.9991	25.5405	25.9893	27.8053	26.5224
200041	1.1511	0.8409	24.5532	24.9670	26.6777	25.4297
200050	1.2555	0.9882	26.4992	27.6825	29.5033	27.9408
200052	1.0971	0.8409	21.8726	22.5159	24.4204	22.9910
200063	1.1426	0.9590	25.0167	25.8623	27.9748	26.3221
210001	1.3534	0.9443	27.7561	28.2858	29.3471	28.4871
210002	1.9675	1.0031	26.4992	32.3005	33.7388	30.7141
210003	1.6589	1.0676	29.8684	34.1109	30.7334	31.5417
210004	1.4229	1.1017	34.2392	33.6056	31.7132	33.1035
210005	1.2759	1.1017	28.7557	28.9554	29.5835	29.1066
210006	1.0873	1.0031	25.4081	25.9005	27.3620	26.2242
210007	1.8886	1.0031	30.2548	31.8767	30.7124	30.9328
210008	1.3842	1.0031	25.2833	24.3341	28.8850	26.1403
210009	1.6931	1.0031	26.2360	27.7900	30.2661	28.0855
210010	***	*	25.7775	*	*	25.7775
210011	1.3772	1.0031	27.5031	30.8575	31.0966	29.8770
210012	1.6040	1.0031	27.4103	30.3078	31.1778	29.7278
210013	1.2771	1.0031	25.1348	28.5328	28.9917	27.5062
210015	1.2770	1.0031	28.2029	29.9261	32.2774	30.1836
210016	1.7522	1.1017	32.2081	32.3506	33.5493	32.6964
210017	1.1905	0.8912	23.2167	25.1890	26.8592	25.1002
210018	1.1898	1.1017	29.1870	29.5533	29.6521	29.4662
210019	1.7927	0.8912	26.1824	27.3731	28.7844	27.4744
210022	1.3934	1.1017	33.8015	35.4727	37.3092	35.4772
210023	1.4341	1.0110	30.4656	32.1812	33.0212	31.9645
210024	1.7296	1.0031	29.5579	30.6359	32.9434	31.0668
210025	1.2742	0.8912	26.0771	23.8552	24.8570	24.7700
210027	1.5326	0.8912	26.0111	24.6343	24.4821	25.0058
210028	1.0538	0.9424	25.9221	26.3469	26.7462	26.3461
210029	1.2601	1.0031	27.9741	31.0266	31.8539	30.2810
210030	1.2157	0.8912	29.5635	26.9763	32.2033	29.6024
210032	1.1523	1.0667	26.1829	27.0727	27.9359	27.1028
210033	1.1658	1.0031	29.0420	28.5534	29.2504	28.9511
210034	1.2970	1.0031	28.4308	30.2908	32.3827	30.4309

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
210035	1.2764	1.0676	26.1083	28.6484	27.3901	27.4000
210037	1.1898	0.8912	27.0973	27.3287	27.8394	27.4525
210038	1.2307	1.0031	29.5980	29.8121	32.3206	30.5517
210039	1.1414	1.0676	27.6940	30.4991	32.4139	30.2667
210040	1.2133	1.0031	29.3514	28.3559	29.2390	28.9752
210043	1.2979	1.0110	27.5657	26.6524	32.6961	28.8477
210044	1.3213	1.0031	28.8700	29.7339	30.3349	29.6367
210045	0.9662	0.8912	15.6380	14.2223	16.3724	15.4690
210048	1.2751	1.0031	28.4638	27.5043	26.0650	27.2655
210049	1.2023	1.0031	26.9656	26.0900	27.0161	26.6997
210051	1.3644	1.0676	29.2998	29.8892	29.5219	29.5723
210054	1.2933	1.0676	26.2295	27.4328	27.7607	27.1406
210055	1.1642	1.0676	29.9708	30.6941	31.4905	30.7118
210056	1.2997	1.0031	28.6091	30.0810	32.3518	30.4754
210057	1.3572	1.1017	32.2883	31.6787	32.8299	32.2617
210058	1.0863	1.0031	29.7841	31.0873	31.1988	30.7830
210060	1.1804	1.0676	28.5087	27.1764	29.9626	28.5557
210061	1.2433	0.8912	23.6662	23.1645	25.0253	23.9970
220001	1.3836	1.1355	29.0014	30.6070	31.2316	30.2898
220002	1.1827	1.1488	30.3598	32.4356	33.6649	32.2137
220003	***	*	22.0549	*	*	22.0549
220006	1.2814	*	30.8599	30.7673	33.6438	31.7232
220008	1.2471	1.1304	30.1043	31.3385	34.7924	32.1143
220010	1.1289	1.1304	29.7998	30.7804	32.0925	30.8934
220011	1.5403	1.1488	34.4064	34.7655	36.5640	35.2410
220012	1.1909	1.2612	35.7872	37.8763	39.7564	37.8806
220015	1.1221	1.0451	28.3397	29.6315	32.4903	30.2089
220016	1.2751	1.0451	28.0608	30.4813	32.5863	30.3587
220017	1.0840	1.1844	29.7108	31.6170	33.3020	31.5466
220019	1.2035	1.1355	23.2544	24.4009	25.7855	24.4947
220020	1.2983	1.1304	26.5305	28.5288	30.8458	28.6772
220024	1.0403	1.0451	27.3488	28.7342	31.9491	29.2912
220025	***	1.1355	23.0637	25.6478	30.4369	26.1069
220028	1.1319	*	32.0980	31.7122	39.3089	34.1922
220029	1.1315	1.1304	28.6970	30.6935	31.6363	30.3492
220030	1.6670	1.0451	24.4289	26.8849	28.1347	26.5400
220031	1.2129	1.1844	34.8183	36.8477	38.9433	36.9174
220033	1.4179	1.1304	28.2539	31.8249	32.3495	30.8022
220035	1.5119	1.1304	28.6238	31.4470	34.8739	32.8577
220036	1.4766	1.1844	31.5184	33.1436	35.9124	33.5798
220046	1.2148	1.0053	28.1396	30.4460	31.4510	30.0573
220049	1.0817	1.1488	27.7518	30.4740	32.4652	30.2584
220050	1.3058	1.0451	26.3768	28.3434	29.5194	28.1065
220051	1.1342	0.9706	29.8380	30.2552	30.1022	30.0683
220052	0.9584	1.1844	29.8577	32.4130	32.3532	31.5202
220058	1.1735	1.1355	24.9642	25.7247	27.8893	26.1881
220060	0.5718	1.1844	32.3362	32.5477	34.7336	33.2260
220062	1.2551	1.1355	24.2779	25.0766	25.4224	24.9426
220063	1.2422	1.1488	27.3968	30.2866	32.9283	30.2274
220065	1.3440	1.0451	26.5513	27.6009	30.1103	28.0583
220066	1.1846	1.0451	27.1317	27.8073	29.9736	28.3106
220067	1.1331	1.1844	29.8911	30.2222	32.4019	30.8648
220070	1.8639	1.1488	31.9283	33.1299	34.2598	33.1439
220071	1.1778	1.1844	32.2936	36.5065	37.4087	35.4748
220073	1.3058	1.1304	31.3566	34.2989	36.0289	33.8953
220074	1.3058	1.0533	28.4930	30.5607	31.4730	30.1564
220B744	***	1.1844	28.4930	30.5607	31.4730	30.1564
220075	1.5116	1.1844	29.1588	30.9175	32.2957	30.7771
220076	***	*	29.7507	27.5148	*	28.6235
220077	1.6762	1.1026	30.2684	31.7325	34.0168	32.0323
220080	1.2068	1.1304	28.9835	29.9595	31.1268	30.0450
220082	1.2840	1.1488	26.9841	30.0611	30.8230	29.3142
220083	1.0834	1.1844	32.9143	34.5118	34.5969	33.9912
220084	1.2052	1.1488	32.5711	30.9527	31.6955	31.7158
220086	1.8146	1.1844	34.3667	34.2388	35.3451	34.6686
220088	1.8790	1.1844	28.5462	35.8255	34.7637	32.6700
220089	***	*	31.1708	32.6305	34.8205	32.8410

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Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
220090	1.1951	1.1355	30.8685	32.9011	34.1963	32.7325
220095	1.1073	1.1355	27.4273	28.0673	30.8626	28.8006
220098	1.1432	1.1488	28.8314	30.5869	31.5403	30.3885
220100	1.3485	1.1844	29.6912	31.9859	34.6599	32.1947
220101	1.2863	1.1488	33.1690	35.3464	37.7809	35.5307
220105	1.2082	1.1488	31.9421	33.2625	34.4029	33.2435
220108	1.1284	1.1844	30.6252	32.6131	33.8854	32.3646
220110	2.0146	1.1844	36.6084	39.2167	40.7382	38.9261
220111	1.2052	1.1844	31.1850	33.6167	34.2498	33.0681
220116	1.9487	1.1844	32.9988	36.4149	38.8799	36.0050
220119	1.0940	1.1844	30.1056	30.9965	32.0863	31.1230
220126	1.1444	1.1844	28.7805	31.4882	32.6938	30.9694
220133	***	*	33.6003	29.4855	34.9182	32.6345
220135	1.3229	1.2612	33.9866	36.0203	37.5189	35.8946
220153	***	*	*	*	19.8085	19.8085
220154	0.9781	1.1844	28.6461	*	28.7898	28.7112
220162	1.6210	*	*	*	*	*
220163	1.5708	1.1355	33.6484	34.4874	37.4968	35.2942
220171	1.7187	1.1488	30.4036	32.7414	35.9948	33.0860
220174	1.2041	1.1304	31.7572	30.0406	30.9503	30.8602
220175	1.2664	*	*	*	*	*
220176	1.6820	1.1355	*	*	*	*
230002	1.2938	1.0144	29.1410	32.9010	32.7578	31.6084
230003	1.2256	0.9475	26.1278	27.5824	28.4716	27.4080
230004	1.7418	0.9968	26.7206	29.3934	31.5136	29.3059
230005	1.2619	0.9382	24.1902	25.8768	27.7463	25.8963
230006	1.0740	*	23.8835	*	*	23.8835
230013	1.3243	1.0244	23.7822	24.6511	27.2075	25.1219
230015	1.1456	0.9204	24.6571	26.2782	27.2541	26.0748
230017	1.6997	1.0501	29.5178	31.8821	32.5396	31.3897
230019	1.6525	1.0244	28.4575	32.3401	34.3213	31.6365
230020	1.7510	1.0144	29.2869	28.5646	29.5324	29.1347
230021	1.5938	1.0147	24.9551	26.5659	28.6169	26.7256
230022	1.3116	0.9907	23.3000	25.6683	30.1195	26.2393
230024	1.6711	1.0144	30.0813	32.1483	32.5892	31.6103
230027	1.0649	*	23.5511	*	*	23.5511
230029	1.6033	1.0244	29.0935	32.3538	32.3845	31.2338
230030	1.2720	0.8975	22.3174	23.8082	25.1100	23.7840
230031	1.3712	1.0034	25.4679	29.7232	30.0120	28.2715
230034	1.3767	0.8909	26.7967	24.4845	24.4141	25.2370
230035	1.2614	0.9374	21.2317	24.8822	25.6715	24.0699
230036	1.4568	0.9394	28.3622	29.3754	29.9642	29.2271
230037	1.3478	1.0144	26.2000	28.9244	28.5311	27.9038
230038	1.7887	0.9475	26.3480	28.2012	29.1263	27.9600
230040	1.2065	0.9374	24.2349	25.5154	26.3190	25.3856
230041	1.6028	0.9394	26.1760	27.8853	27.9569	27.3833
230042	***	*	26.2037	*	*	26.2037
230046	1.9067	1.0499	30.3591	31.6235	32.2924	31.4692
230047	1.4044	1.0096	28.1351	31.1771	31.7075	30.3611
230053	1.6335	1.0144	29.8703	32.5711	32.1566	31.5479
230054	1.8867	0.9357	24.9905	25.7591	26.3251	25.7015
230055	1.2660	0.8909	25.4143	27.4349	28.4787	27.1074
230058	1.1260	0.8909	24.0657	25.9291	27.3156	25.7990
230059	1.5526	0.9475	25.5350	27.9091	28.5875	27.3993
230060	1.2205	0.8909	25.5015	28.2874	27.0288	26.9333
230065	***	*	28.4631	32.6255	*	29.9929
230066	1.3080	0.9968	27.4928	30.6184	30.2104	29.5137
230069	1.1594	1.0244	29.5556	30.2663	31.3406	30.4158
230070	1.6379	0.9123	24.2342	25.6778	26.8315	25.5687
230071	0.8679	1.0244	26.3907	28.3064	29.6728	28.1431
230072	1.3908	0.9475	24.4933	26.2838	27.4742	26.0946
230075	1.3788	1.0100	27.6193	28.2540	30.9525	28.9620
230077	1.9004	1.0244	27.6157	29.8538	30.5567	29.3470
230078	1.0892	0.8909	23.9902	25.6809	25.7232	25.1289
230080	1.3052	0.9394	21.2314	24.1573	24.5432	23.3438
230081	1.1911	0.8909	23.0788	24.7374	26.4337	24.7718
230082	1.6774	*	22.2165	*	*	22.2165

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
230085	1.1931	1.0501	22.7313	23.4959	25.4289	23.9146
230087	***	*	16.9168	*	*	16.9168
230089	1.3368	1.0144	28.7015	31.0522	32.8450	30.6488
230092	1.3633	1.0144	26.3584	28.6829	29.3442	28.2036
230093	1.2101	0.8967	26.4967	25.5804	27.4463	26.5309
230095	1.3084	0.8909	21.3916	22.8681	25.1854	23.1780
230096	1.1209	1.0147	28.7681	30.6024	31.7399	30.4267
230097	1.7979	0.9374	26.5773	28.2526	29.8962	28.2268
230099	1.2073	1.0144	26.4882	29.0221	29.3720	28.3183
230100	1.1880	0.8909	21.8895	24.1881	25.2118	23.7862
230101	1.2029	0.8909	24.3772	25.4839	28.4372	26.1557
230103	***	*	21.6609	*	*	21.6609
230104	1.5968	1.0144	30.5570	32.4634	32.4125	31.7994
230105	1.8559	0.9394	27.2705	32.4583	30.5515	30.1274
230106	1.1782	0.9475	24.3980	25.3243	27.8584	25.9492
230108	1.1225	0.8909	18.4064	20.2539	24.4337	20.8956
230110	1.2978	0.8909	28.7704	27.0040	25.7196	27.1027
230117	1.8739	1.0501	29.4775	32.7994	33.0602	31.7183
230118	1.0425	0.8909	22.3636	23.6110	24.8890	23.5923
230119	1.3965	1.0144	30.2441	30.7488	31.9696	31.0539
230120	1.1884	*	24.1485	*	*	24.1485
230121	1.2817	0.9907	24.5220	26.4940	26.8361	25.9746
230130	1.7325	1.0244	26.6076	30.1608	31.2744	29.4079
230132	1.4181	1.1013	30.5318	32.3939	35.5304	32.7891
230133	1.3876	0.8909	24.3174	23.9442	25.0647	24.4539
230135	1.4429	1.0144	25.8407	25.9583	23.6005	25.1118
230141	1.6587	1.1013	28.6326	31.6152	33.2553	31.1646
230142	1.2476	1.0144	26.9433	27.8377	29.7417	28.1870
230143	***	*	21.4083	*	*	21.4083
230144	2.3494	1.0499	*	*	*	*
230146	1.3924	1.0144	26.3432	26.8156	27.2621	26.8179
230151	1.3157	1.0244	28.2243	27.4546	29.8366	28.4831
230153	***	*	22.8644	*	*	22.8644
230156	1.6271	1.0499	31.1909	32.3755	33.9034	32.4969
230165	1.6925	1.0144	28.9636	29.6376	31.4242	30.0168
230167	1.6197	1.0048	27.4562	29.8071	31.0657	29.4630
230169	***	*	31.8442	*	*	31.8442
230172	1.1867	*	25.7402	*	*	25.7402
230174	1.2752	0.9475	27.6920	30.0563	29.7488	29.1588
230176	1.2853	1.0144	27.3605	28.1498	28.9798	28.2393
230180	1.1328	0.8909	24.7358	26.0707	24.9696	25.2514
230184	***	*	23.6706	34.6295	*	25.2502
230186	***	*	26.2282	*	*	26.2282
230189	***	*	23.0100	*	*	23.0100
230190	0.8738	1.0501	29.9603	30.7875	33.8229	31.5779
230193	1.2839	1.0034	23.3565	25.1626	26.4728	25.0025
230195	1.4446	1.0096	28.2892	29.5656	30.9702	29.6539
230197	1.5799	1.1013	30.0367	32.0063	33.7128	31.9307
230204	1.3299	1.0096	29.1466	31.5615	32.2882	31.0169
230207	1.3461	1.0244	24.5201	25.4268	25.1983	25.0567
230208	1.1990	0.9374	21.9651	23.7523	24.3476	23.3648
230212	0.9926	1.0499	29.7981	31.9818	32.8567	31.5065
230216	1.5505	1.0034	27.5230	29.0147	29.2061	28.5839
230217	1.3820	1.0100	28.6074	30.1136	31.9732	30.2664
230222	1.3803	0.9394	26.9724	29.9341	30.6482	29.2060
230223	1.2980	1.0244	29.2854	28.6745	29.8430	29.2661
230227	1.5005	1.0096	29.5798	30.8218	33.6716	31.2208
230230	1.5223	1.0048	27.9607	29.8763	31.1712	29.6595
230235	1.0691	*	21.8777	*	*	21.8777
230236	1.5042	0.9475	28.4754	31.3110	30.8556	30.2130
230239	1.2714	0.8909	22.1040	21.0814	22.1579	21.7759
230241	1.2149	1.0034	27.4890	27.6106	28.5516	27.9012
230244	1.4375	1.0144	26.4326	29.6283	30.0405	28.6466
230254	1.5090	1.0244	28.1216	29.2653	29.5874	28.9733
230257	0.9484	1.0096	27.8198	29.6712	30.6372	29.3897
230259	1.2662	1.0499	26.8677	27.4217	27.5982	27.2972
230264	1.8524	1.0096	19.2398	22.7768	28.5416	23.0410

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
230269	1.5020	1.0244	28.8187	31.3226	31.3800	30.6060
230270	1.2636	1.0144	27.8488	28.5372	28.8173	28.4111
230273	1.5130	1.0144	29.9307	31.9862	31.5396	31.1383
230275	0.4718	0.9123	23.1095	23.8104	25.2133	24.0702
230277	1.4057	1.0244	29.1973	29.8372	31.4023	30.1462
230279	0.4951	1.0244	24.7673	27.2816	27.9726	26.6926
230283	***	*	26.2622	33.5531	*	27.8105
230289	***	*	29.7721	*	*	29.7721
230291	***	*	30.9656	*	*	30.9656
230292	***	*	31.8943	*	*	31.8943
230294	***	*	*	31.6195	*	31.6195
230295	***	*	*	27.1298	*	27.1298
230296	***	*	*	*	34.2107	34.2107
230297	1.6768	1.0096	*	*	*	*
230299	0.7569	1.0096	*	*	*	*
230300	2.9905	1.0096	*	*	*	*
240001	1.5368	1.0897	31.5753	33.1499	34.7673	33.1702
240002	1.8838	1.0082	28.9860	31.6000	33.1051	31.2232
240004	1.5928	1.0897	30.8072	32.7010	32.5777	32.0088
240006	1.0956	1.0491	30.1949	31.0777	33.4777	31.6176
240010	2.0512	1.0491	31.3733	33.4668	32.7261	32.5154
240013	***	*	28.3860	*	*	28.3860
240014	1.0234	1.0897	29.8623	29.8905	30.7519	30.1868
240016	1.2729	*	26.7814	*	*	26.7814
240017	1.1862	*	24.4417	24.3596	*	24.4015
240018	1.2793	0.9919	25.6236	28.1432	29.4995	27.7723
240019	1.0504	1.0082	28.6723	33.7546	32.7052	31.5906
240020	1.0690	1.0897	31.2443	31.3874	33.2449	31.9653
240021	1.0320	*	27.1236	*	*	27.1236
240022	1.0313	0.9114	25.2066	26.1920	27.3137	26.2644
240027	0.9334	*	18.2482	*	*	18.2482
240029	0.9036	*	25.3568	*	*	25.3568
240030	1.3356	1.0323	24.7154	26.5508	27.1312	26.1217
240031	***	*	26.7778	*	*	26.7778
240036	1.6944	1.1059	28.0812	32.7028	34.2980	31.6464
240038	1.5433	1.0897	31.0779	31.9891	33.0554	32.0416
240040	1.0727	1.0082	27.4895	27.5074	28.9009	27.9569
240043	1.2167	0.9114	21.8684	23.3489	24.0708	23.1186
240044	1.0578	0.9739	22.0973	25.0988	26.8681	24.6231
240047	1.5014	1.0082	28.8289	28.6406	29.7835	29.0980
240050	1.1121	1.0897	26.4854	27.5553	30.9805	28.4152
240052	1.2203	0.9114	26.4256	28.7206	29.4617	28.2289
240053	1.4790	1.0897	29.5315	31.4324	33.1148	31.4053
240056	1.2476	1.0897	31.6623	33.1728	34.0845	32.9884
240057	1.8390	1.0897	30.6258	30.7703	33.4713	31.6052
240059	1.1410	1.0897	29.7916	31.0911	32.4803	31.1825
240061	1.8232	1.0491	30.6383	33.1799	32.0828	31.9873
240063	1.6425	1.0897	32.3487	33.7895	35.2877	33.8358
240064	1.1840	0.9956	29.9662	34.3757	27.2407	30.4845
240066	1.5079	1.0897	33.4532	35.3441	36.0705	35.0117
240069	1.2056	1.0491	28.9496	29.3718	30.9719	29.7863
240071	1.1303	1.0491	28.0586	28.6950	31.7754	29.4920
240075	1.1560	1.0323	26.1956	27.5039	29.1171	27.5983
240076	1.0339	1.0897	29.8561	30.6936	33.1439	31.3353
240078	1.7528	1.0897	32.3235	32.5785	34.6118	33.2014
240080	1.9192	1.0897	31.6828	32.5725	34.8064	32.9942
240083	1.2282	*	26.6582	*	*	26.6582
240084	1.1711	1.0082	26.8141	26.5975	27.0995	26.8366
240088	1.2869	1.0323	28.0825	28.0603	29.1387	28.4292
240093	1.4134	1.0897	25.5805	27.2928	29.1717	27.3783
240100	1.3073	0.9114	27.6299	30.8391	31.5774	30.0103
240101	1.1570	0.9114	25.5355	25.6963	26.8849	26.0843
240103	***	*	22.7077	*	*	22.7077
240104	1.1350	1.0897	31.4306	31.6511	35.0736	32.8285
240106	1.6075	1.0897	29.3455	30.5927	32.8156	30.9392
240109	0.8676	*	16.5051	*	*	16.5051
240115	1.5330	1.0897	31.3869	32.0107	33.5288	32.3224

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
240117	1.1821	0.9641	23.6230	24.5750	27.6950	25.3203
240123	***	*	21.7500	*	*	21.7500
240128	***	*	21.5791	23.3334	*	22.4504
240132	1.2808	1.0897	31.7139	32.1233	34.6191	32.7811
240141	1.1219	1.0897	26.4016	31.4468	32.8689	30.5116
240143	0.8966	*	21.7416	*	*	21.7416
240152	***	*	29.6196	*	*	29.6196
240162	***	*	22.2722	*	*	22.2722
240166	1.1560	0.9114	25.7509	27.6987	26.5328	26.6686
240187	1.3285	1.0897	27.8811	27.8844	29.1582	28.3455
240196	0.8200	1.0897	30.7720	31.5965	34.3743	32.2603
240206	0.8831	1.4401	*	*	*	*
240207	1.1964	1.0897	31.7665	32.5589	34.6792	33.0557
240210	1.2901	1.0897	32.1564	32.7123	34.4184	33.1005
240211	0.9769	0.9926	18.8503	22.5430	17.4044	19.3517
240213	1.3936	1.0897	32.7532	33.8680	35.7818	34.1758
250001	1.9108	0.7951	22.7827	23.5222	23.7773	23.3786
250002	0.9543	0.7752	23.3844	23.4063	25.4201	24.0840
250004	1.9118	0.8964	24.1065	24.7907	25.8722	24.9584
250006	1.1133	0.8964	24.0191	24.4282	25.9199	24.8140
250007	1.2414	0.8608	25.8710	24.8929	27.7665	26.1862
250009	1.2438	0.8435	22.2323	23.0352	23.4866	22.9223
250010	0.9922	0.7752	19.4402	21.4322	21.8665	20.9164
250012	0.9498	0.9314	20.2922	21.5540	23.4837	21.7607
250015	1.1227	0.7752	20.7555	22.0067	22.2803	21.6585
250017	1.0264	0.7752	21.3950	22.7660	33.6840	25.4569
250018	0.8983	0.7752	16.6292	17.1276	17.9025	17.2152
250019	1.5215	0.8608	23.9741	25.7376	26.2199	25.3039
250020	0.9941	0.7752	21.4019	22.1851	23.7245	22.4970
250021	***	*	20.3564	*	*	20.3564
250023	0.8728	0.8217	16.2418	18.0108	18.5067	17.6056
250025	1.0996	0.7752	20.5258	22.5621	23.1738	22.1091
250027	0.9597	0.7752	17.3481	24.4937	26.9922	22.7357
250031	1.3166	0.7951	21.4326	24.8139	25.9189	23.7971
250034	1.5394	0.8964	24.3189	26.1887	26.7996	25.7643
250035	0.8596	0.7752	17.2046	20.1622	19.1038	18.8948
250036	1.0403	0.8540	19.1975	20.3625	19.7951	19.8104
250037	0.9020	*	17.4012	*	*	17.4012
250038	0.9406	0.7951	18.9050	22.2571	26.9621	22.1505
250039	0.9692	*	17.3155	*	*	17.3155
250040	1.4843	0.8217	23.2285	24.5962	27.3366	25.0602
250042	1.2097	0.8964	23.4135	25.6807	26.1190	25.0569
250043	1.0165	0.7752	19.8097	18.8979	20.8841	19.8723
250044	1.0512	0.7752	23.3862	24.0508	24.9199	24.1132
250045	0.8706	*	26.3831	*	*	26.3831
250048	1.6242	0.7951	22.9765	25.2092	24.7659	24.3112
250049	0.8734	0.7752	17.7005	19.1044	20.4775	19.2031
250050	1.1882	0.7752	19.1467	20.8084	21.1657	20.4032
250051	0.8083	0.7752	10.6095	14.3741	13.9532	12.9323
250057	1.1237	0.7752	20.1900	22.7601	24.3654	22.3993
250058	1.2419	0.7752	18.1704	19.2502	18.9970	18.8129
250059	0.9234	0.7752	19.2976	23.8997	26.7491	23.0906
250060	0.8007	0.7752	16.8247	28.1431	25.4779	22.9648
250061	0.9008	0.7752	12.8174	17.8267	18.7413	16.2215
250067	1.0773	0.7752	21.6911	23.1193	25.2189	23.3711
250069	1.4798	0.8162	22.8162	22.6353	22.4194	22.6160
250072	1.6974	0.7951	24.6587	25.8399	25.5337	25.3438
250077	0.9375	0.7752	14.7632	18.3735	19.0416	17.4307
250078	1.6957	0.8217	20.9354	22.1243	22.8430	21.9367
250079	0.8566	0.7951	38.0032	45.5166	43.0845	42.6371
250081	1.3341	0.8162	24.7031	23.9995	25.6808	24.7915
250082	1.4638	0.7956	19.6966	23.0287	23.5399	22.0713
250084	1.2087	0.7752	18.5775	19.6492	19.1604	19.1217
250085	0.9997	0.7752	19.7008	22.5513	24.2915	22.2573
250093	1.1868	0.7752	21.3237	23.0984	23.9128	22.7658
250094	1.7390	0.8217	22.7312	24.1422	24.7718	23.8835
250095	1.0356	0.7752	21.3511	21.7488	23.6140	22.2444

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
250096	1.1760	0.7951	22.6298	24.9187	26.3743	24.6259
250097	1.6155	0.8010	20.1687	21.8139	22.0211	21.3430
250099	1.2795	0.7951	19.5797	21.1269	21.5656	20.7220
250100	1.4728	0.8162	24.2209	25.6846	27.0286	25.6566
250101	***	*	19.3543	*	*	19.3543
250102	1.5957	0.7951	24.2868	24.6652	25.4050	24.7885
250104	1.4888	0.8162	22.6591	23.4303	24.4311	23.5422
250105	0.9250	*	18.1195	*	*	18.1195
250107	0.5882	*	17.8999	*	*	17.8999
250112	0.9893	0.7752	21.2824	24.3069	26.3357	23.9697
250117	1.1062	0.8217	23.3673	22.2450	23.7337	23.1049
250120	***	*	23.4277	24.6370	26.6522	24.9400
250122	1.1115	0.7752	24.5854	27.2795	27.4424	26.3827
250123	1.3323	0.8608	24.5115	26.6221	27.9058	26.3779
250124	0.8198	0.7951	17.2181	20.4394	20.5667	19.3927
250125	1.2242	0.8608	27.7077	27.5158	26.7687	27.3398
250126	0.9523	0.9314	21.7112	24.4126	25.0019	23.6618
250127	0.8846	1.4401	*	*	*	*
250128	0.9268	0.8198	17.6269	17.7624	21.7882	19.2637
250134	0.8858	0.7951	25.8369	22.2167	21.0211	22.9411
250136	1.0311	0.7951	23.0637	22.9468	25.2241	23.7171
250138	1.3296	0.7951	23.8861	24.3018	25.2642	24.4955
250141	1.5435	0.9314	27.6158	28.5922	30.5112	28.9880
250146	0.7934	*	18.6486	*	*	18.6486
250149	0.8337	0.7752	15.0641	16.8796	17.2268	16.4094
250151	0.4710	0.7752	17.2205	18.8846	22.8238	18.4860
250152	0.8555	0.7951	25.7837	26.9334	26.4559	26.3576
250153	***	*	29.0461	*	*	29.0461
250155	***	*	*	22.5728	*	22.5728
250156	***	*	*	*	16.8659	16.8659
250157	***	*	*	*	29.6398	29.6398
250160	2.3735	0.8198	*	*	*	*
250161	2.1565	0.7951	*	*	*	*
260001	1.6505	0.9212	25.9250	27.9230	29.5271	27.7489
260002	***	*	26.4879	*	*	26.4879
260004	0.9691	0.8153	16.9422	20.3217	21.3629	19.5753
260005	1.5536	0.8983	26.5773	27.7855	27.9477	27.4315
260006	1.4872	0.8153	26.7587	30.3440	27.3754	28.2413
260008	***	*	18.9522	*	*	18.9522
260009	1.1605	0.9319	22.1816	24.2360	25.7546	24.0697
260011	1.5003	0.8703	22.7062	25.6387	27.5762	25.2813
260012	***	*	20.3061	*	*	20.3061
260013	***	*	20.5007	*	*	20.5007
260015	1.0079	0.8503	22.5409	24.6139	25.0640	24.0564
260017	1.3285	0.8703	22.7022	23.5713	25.0461	23.8093
260018	1.0396	*	17.0434	*	*	17.0434
260020	1.7374	0.8983	26.0407	27.4730	29.3080	27.6649
260021	1.3986	0.8983	27.6329	29.3646	32.6735	29.7171
260022	1.4082	0.8476	22.8085	23.3393	24.8713	23.6527
260023	1.3554	0.8983	21.2077	24.3192	25.4314	23.5901
260024	1.1334	0.8153	18.4829	19.4952	19.2199	19.0583
260025	1.3603	0.8983	22.4645	22.2451	24.0358	22.9418
260027	1.6405	0.9319	25.3348	26.3590	29.3811	27.0039
260032	1.8518	0.8983	23.9478	25.6763	27.4857	25.6996
260034	0.9779	0.9319	24.1143	25.0573	27.1685	25.5196
260035	***	*	17.8741	*	*	17.8741
260036	***	*	22.1913	*	*	22.1913
260040	1.6616	0.8791	23.3566	24.3938	25.9074	24.5552
260047	1.4495	0.8703	24.4185	25.4978	26.6343	25.5319
260048	1.1748	0.9319	24.3906	27.6117	28.1515	26.7038
260050	1.1594	0.8827	23.6849	25.0506	26.2346	25.0319
260052	1.3105	0.8983	24.5165	26.0052	27.6360	26.0330
260053	1.0761	*	21.6607	*	*	21.6607
260057	1.0689	0.9319	19.3335	20.9639	21.5925	20.6154
260059	1.1569	0.8230	19.7243	22.6922	22.3885	21.6448
260061	1.1348	0.8153	21.5264	22.4766	22.8589	22.2793
260062	1.2554	0.9319	26.4539	28.1661	28.4975	27.7053

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
260064	1.3816	0.8538	19.0543	22.2395	23.3498	21.5194
260065	1.7758	0.8791	23.0015	27.1014	29.3564	26.5324
260067	0.9311	*	17.6256	*	*	17.6256
260068	1.7942	0.8538	24.9504	26.0295	27.3475	26.1217
260070	0.9560	0.8153	18.4779	24.6331	21.9701	21.9657
260073	***	*	21.6214	*	*	21.6214
260074	1.2370	0.8538	24.8655	25.6218	28.0468	26.1521
260077	1.6220	0.8983	25.5782	26.7466	27.6624	26.6607
260078	1.2824	0.8153	19.0802	20.1983	21.1539	20.1477
260080	0.9199	0.8153	14.7774	17.9107	18.6070	17.0074
260081	1.5693	0.8983	26.3969	28.1182	29.1890	27.9120
260085	1.5678	0.9319	25.6302	26.6718	28.0306	26.7545
260086	0.9570	*	19.1702	*	*	19.1702
260091	1.5284	0.8983	27.2407	28.0537	28.5473	27.9539
260094	1.7033	0.8620	23.2544	24.1473	23.8654	23.7602
260095	1.3886	0.9319	25.5668	24.2698	27.6196	25.7194
260096	1.5016	0.9319	27.5592	29.7312	30.7267	29.3752
260097	1.2010	0.8453	21.3957	25.0624	25.5634	24.1104
260102	0.9492	0.9319	24.2368	27.2145	26.7624	26.1065
260104	1.5666	0.8983	26.2867	28.6247	28.0235	27.6814
260105	1.8547	0.8983	28.8849	29.8848	29.4766	29.4216
260107	1.2949	0.9319	26.7781	25.8177	27.9710	26.8276
260108	1.8354	0.8983	24.9880	26.6374	27.0758	26.2658
260110	1.6385	0.8983	23.7978	24.7656	26.6030	25.1086
260113	1.1068	0.8346	20.9644	21.2072	21.8884	21.3627
260115	1.1422	0.8983	21.9858	23.1396	24.6389	23.3012
260116	1.0970	0.8240	18.5076	21.3503	20.7479	20.1811
260119	1.3301	0.8503	24.9937	27.9769	31.5490	28.0677
260122	***	*	20.8015	*	*	20.8015
260127	0.9486	*	21.8533	*	*	21.8533
260137	1.7241	0.9212	22.7431	24.3273	27.6592	24.9488
260138	1.9932	0.9319	28.5610	30.4410	30.6284	29.8958
260141	1.8464	0.8538	22.4886	24.1555	25.5663	24.0283
260142	1.0863	0.8153	20.3993	21.5923	21.7609	21.2699
260147	0.9227	0.8153	18.5153	21.4235	22.1928	20.7819
260159	***	*	23.7427	22.6276	23.9515	23.4460
260160	1.0727	0.8153	21.0544	23.8257	25.5096	23.4627
260162	1.3822	0.8983	25.1423	27.0236	28.4660	26.9323
260163	1.1447	0.8240	20.1949	21.6408	21.5566	21.0997
260164	1.3771	*	19.7068	*	*	19.7068
260166	1.2270	0.9319	27.0237	29.1225	28.5858	28.2382
260175	1.0781	0.9319	22.6171	25.1817	24.6064	24.1908
260176	1.7021	0.8983	27.4244	29.3034	31.1056	29.3206
260177	1.2063	0.9319	26.1178	27.0185	28.7942	27.3136
260178	1.8398	0.8538	22.2251	25.4782	27.1201	25.2036
260179	1.5496	0.8983	26.1419	26.6069	28.3234	27.0262
260180	1.5401	0.8983	26.7461	28.2931	29.3820	28.1562
260183	1.6674	0.8983	26.0418	27.5577	29.2684	27.6352
260186	1.5439	0.8703	25.3148	26.9797	28.8610	27.0998
260190	1.1950	0.9319	26.4505	27.9137	30.5343	28.3451
260191	1.3649	0.8983	23.3856	24.6973	26.3244	24.8437
260193	1.1902	0.9319	26.2979	26.8922	28.1060	27.0944
260195	1.2138	0.8153	22.3959	22.6870	24.0411	23.0824
260198	0.9613	0.8983	27.5996	28.0021	27.2555	27.6065
260200	1.2664	0.8983	24.8624	28.2453	27.4784	26.8903
260207	1.1544	0.8791	19.7294	22.6109	22.9579	22.0292
260209	1.1052	0.8703	23.2430	25.0098	25.0749	24.4649
260210	1.2687	0.8983	25.3781	26.8745	30.5975	27.6599
260211	1.5777	0.9319	33.9109	40.9821	35.9113	37.0332
260213	***	*	*	*	34.8953	34.8953
260214	1.2383	0.9319	*	*	*	*
260215	0.8925	*	*	*	*	*
260216	1.1892	0.9319	*	*	*	*
260217	1.9096	0.8153	*	*	*	*
270002	1.1596	0.8336	22.7322	24.0534	25.2907	24.0317
270003	1.3075	0.8761	26.4843	28.8700	29.1938	28.2090
270004	1.6785	0.8871	23.5454	26.1319	26.6779	25.4900

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
270011	1.0334	0.8336	22.1394	22.7061	24.4696	23.0853
270012	1.5540	0.8761	25.2873	25.2914	26.5854	25.7202
270014	1.9641	0.8738	26.2025	25.8231	27.4811	26.5073
270017	1.3197	0.8738	27.5483	26.5404	27.4150	27.1724
270021	***	*	21.7056	*	*	21.7056
270023	1.5487	0.8738	26.7576	25.5682	26.3076	26.1917
270032	1.0283	0.8336	19.6212	20.3469	20.4330	20.1359
270036	***	*	20.4241	*	*	20.4241
270049	1.7517	0.8871	26.3996	27.1634	28.6880	27.4297
270051	1.5580	0.8336	26.6619	26.5621	24.9371	25.9492
270057	1.2534	0.8336	24.2980	25.5811	27.1838	25.7301
270060	***	*	17.7564	*	*	17.7564
270074	0.9156	1.4401	*	*	*	*
270081	0.9750	0.8570	17.4862	19.5612	20.0438	18.9885
270086	1.0637	0.8761	*	21.0808	20.7976	20.9433
270087	1.2167	0.8336	*	25.9772	24.8022	25.3663
280003	1.7479	0.9873	29.3921	30.6124	30.1057	30.0354
280009	1.8630	0.9627	26.7678	27.0705	29.3634	27.7395
280013	1.7335	0.9474	26.1908	27.0250	27.9523	27.0727
280020	1.7374	0.9873	26.5068	27.3284	32.3896	28.7656
280021	1.1678	*	22.0489	*	*	22.0489
280023	1.3669	0.9627	22.3230	26.7980	29.5132	26.0305
280030	1.8904	0.9474	30.7481	29.5102	30.6991	30.3314
280032	1.2987	0.9627	23.6462	24.3995	24.7539	24.2697
280040	1.6380	0.9474	26.9827	28.7207	29.5276	28.4319
280054	1.1439	*	23.5665	*	*	23.5665
280057	0.8606	*	20.4830	*	*	20.4830
280060	1.6779	0.9474	26.2139	27.7496	30.3049	28.0748
280061	1.3957	0.9010	24.9482	26.0208	26.4824	25.8457
280065	1.2385	0.9745	26.0135	28.0581	28.0132	27.3416
280077	1.3374	0.8927	25.5624	27.0860	28.2206	26.9878
280081	1.7068	0.9474	26.0541	28.7464	31.1212	28.6426
280105	1.2617	0.9474	26.7555	27.8599	29.8488	28.1889
280108	1.0740	*	23.2503	*	*	23.2503
280111	1.1900	0.8847	23.4770	24.5617	27.4853	25.3180
280117	1.1038	*	24.1521	*	*	24.1521
280119	0.8357	1.4401	*	*	*	*
280123	0.9968	0.8970	*	15.4047	22.2185	17.7515
280125	1.5929	0.8847	21.7657	22.1345	23.2900	22.4202
280127	1.7915	0.9873	*	29.3684	25.6806	27.2615
280128	2.9055	0.9873	*	28.5422	28.8734	28.7213
280129	1.9024	0.9474	*	*	27.8793	27.8793
280130	1.3731	0.9474	*	*	29.8588	29.8588
290001	1.8514	1.1063	31.1981	36.3129	35.5113	34.2992
290002	0.9058	0.9702	18.3469	17.3876	23.9348	19.4284
290003	1.8286	1.1453	28.1625	30.3373	32.8182	30.4051
290005	1.4267	1.1453	27.6697	28.3366	31.7107	29.0818
290006	1.1835	1.0852	27.9501	31.7301	31.9838	30.5940
290007	1.6319	1.1453	37.5559	38.1938	39.7323	38.5049
290008	1.2061	0.9702	27.9714	27.3019	31.1116	28.8004
290009	1.7155	1.1063	29.8019	36.2724	32.3348	32.7010
290010	***	*	23.9655	*	*	23.9655
290012	1.3595	1.1453	31.0843	32.3966	35.7988	33.1284
290016	***	*	26.1925	*	*	26.1925
290019	1.4106	1.0852	28.6158	29.3650	30.5964	29.5670
290020	0.9879	0.9702	21.6993	23.2103	27.6277	23.8492
290021	1.7447	1.1453	33.2116	32.7894	36.7310	34.3050
290022	1.6617	1.1453	29.4422	29.9717	33.5330	30.9653
290027	0.8977	0.9702	15.1448	23.9959	23.9818	21.2171
290032	1.4261	1.1063	31.7105	31.6711	34.6589	32.6749
290039	1.5622	1.1453	31.2941	32.1423	34.9622	32.8643
290041	1.3799	1.1453	33.9877	34.2436	37.6077	35.4456
290042	***	*	*	*	22.4859	22.4859
290044	***	*	*	37.1662	*	37.1662
290045	1.5944	1.1453	30.9612	33.1512	34.4584	33.0001
290046	1.3262	1.1453	*	*	38.7966	38.7966
290047	1.4997	1.1453	*	*	33.4695	33.4695

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
290049	1.3649	0.9702	*	*	26.0725	26.0725
290051	1.6073	0.9702	*	*	*	*
290052	0.9497	0.9702	*	*	*	*
300001	1.5464	1.1260	27.5032	29.2260	29.8145	28.8796
300003	2.1048	1.1260	33.3560	34.7900	37.0886	35.1221
300005	1.4049	1.1260	25.6699	27.8000	27.8431	27.1342
300006	***	*	23.3200	*	*	23.3200
300010	***	*	27.5028	*	*	27.5028
300011	1.2835	1.1329	28.4044	30.9403	31.8928	30.4453
300012	1.3798	1.1329	30.5198	30.4972	31.2655	30.7729
300014	1.1573	1.1260	27.5151	29.7667	29.1847	28.8592
300017	1.3085	1.1260	29.6957	29.9560	31.6699	30.4413
300018	1.4139	1.1260	29.7209	29.4270	31.7891	30.3785
300019	1.2712	1.1260	25.9656	27.5672	28.2287	27.2950
300020	1.1611	1.1329	28.6723	30.8491	30.9783	30.1937
300023	1.3397	1.1260	28.6309	31.0040	31.2726	30.3861
300029	1.7558	1.1260	29.0806	29.8117	31.4429	30.1534
300034	1.9005	1.1329	29.7484	30.7676	31.6880	30.7463
310001	1.7835	1.3230	35.3612	41.7460	39.3391	38.8076
310002	1.8123	1.3003	37.3461	37.9183	37.8652	37.7010
310003	1.1430	1.3230	32.8935	36.2346	39.0785	36.1404
310005	1.3200	1.1674	29.0084	32.1319	33.6311	31.6195
310006	1.2207	1.3230	27.4545	28.4771	28.7321	28.2234
310008	1.3040	1.3230	31.2579	32.6788	33.3172	32.4236
310009	1.3170	1.3003	32.7384	33.6940	33.6165	33.3550
310010	1.2809	1.1709	28.5852	33.9552	33.7009	32.1235
310011	1.2513	1.1732	30.8612	31.2907	34.3497	32.1653
310012	1.6576	1.3230	34.6882	38.3590	39.8568	37.6617
310013	1.3567	1.3003	30.6248	31.0447	35.6260	32.2970
310014	1.9393	1.1617	29.7204	30.0793	32.9016	30.9529
310015	1.9968	1.3003	36.4776	36.8818	39.2928	37.5859
310016	1.3504	1.3230	33.9862	35.6155	38.2740	36.0399
310017	1.3322	1.3003	30.9233	32.2434	35.7308	32.9489
310018	1.1974	1.3003	30.3381	30.3234	32.9704	31.1743
310019	1.5532	1.3230	29.6592	30.3518	30.6369	30.2334
310020	1.5417	1.3230	30.6722	33.5516	37.3372	35.3958
310021	1.6673	1.1617	31.3410	32.1929	31.6562	31.7278
310022	1.2929	1.1617	28.2024	30.4043	31.1951	29.9534
310024	1.2735	1.1674	30.9171	33.3415	33.8622	32.7353
310025	1.3583	1.3230	31.1274	34.3687	32.2630	32.6293
310026	1.1811	1.3230	27.5171	29.1588	30.1392	28.9609
310027	1.3916	1.1674	28.8314	29.7793	31.5967	30.0516
310028	1.1683	1.1674	31.3849	32.2977	33.9911	32.5804
310029	1.9359	1.1617	30.7707	32.9246	33.6695	32.4534
310031	3.0047	1.1617	33.9685	37.0668	39.3783	36.7939
310032	1.3402	1.1617	27.5232	30.7865	33.0258	30.4634
310034	1.3881	1.1617	29.9162	31.7012	32.7523	31.4431
310037	1.3845	1.3230	35.0329	38.5415	38.2865	37.2934
310038	1.9967	1.3003	33.4822	35.9190	36.3344	35.3017
310039	1.2652	1.3003	28.8292	31.4278	33.2100	31.1031
310040	1.3306	1.3230	34.1113	33.8535	37.7945	35.2738
310041	1.3033	1.1617	32.8085	32.8390	33.9799	33.1814
310042	***	*	30.7357	34.4986	*	32.5359
310044	1.3437	1.1709	31.3205	31.9678	33.7614	32.3239
310045	1.6620	1.3230	34.1060	36.7862	38.4424	36.4052
310047	1.3103	1.2064	32.7880	34.1520	37.3695	34.8319
310048	1.3604	1.1617	30.2025	32.9681	33.9506	32.4220
310049	***	*	27.8565	*	*	27.8565
310050	1.2632	1.3003	27.3033	29.1732	32.3686	29.5226
310051	1.4210	1.1674	33.7168	35.0121	38.1174	35.6230
310052	1.3148	1.1617	30.8036	32.5778	33.5849	32.3047
310054	1.3491	1.3003	34.1860	34.4431	36.9095	35.1806
310057	1.3580	1.1617	29.5221	31.1268	31.8933	30.8472
310058	1.0998	1.3230	28.0815	27.1555	30.4080	28.5500
310060	1.2257	1.1617	25.1575	27.3415	27.8242	26.8643
310061	1.2040	1.1617	28.2129	31.6648	39.0538	32.6390
310063	1.3566	1.1674	31.4884	31.9247	33.8519	32.4001

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
310064	1.5564	1.2064	33.4440	35.7607	38.6310	36.0389
310069	1.2283	1.1617	28.1681	31.7642	34.4669	31.6153
310070	1.4393	1.3003	33.2310	34.3225	36.3279	34.6577
310073	1.9384	1.1617	32.0328	32.6733	34.2858	33.0132
310074	1.4076	1.3230	29.4834	40.3494	39.6196	36.4297
310075	1.3486	1.1617	31.6869	31.5226	32.5338	31.9060
310076	1.6948	1.3003	36.4280	38.0643	37.5163	37.3327
310077	***	*	32.6644	34.6085	*	33.6290
310078	***	*	29.8014	30.5761	*	30.1919
310081	1.2435	1.1617	26.6136	30.1561	31.0699	29.3013
310083	1.2967	1.3003	28.2392	30.3580	31.9151	30.1908
310084	1.2495	1.1617	32.9001	33.5941	32.6051	33.0233
310086	1.2196	1.1617	29.3058	29.5566	29.8794	29.5860
310088	1.1944	1.2064	26.4966	29.9929	30.3552	28.9197
310090	1.2491	1.1674	30.8941	32.8191	33.4615	32.3298
310091	1.1872	1.1617	27.7204	29.3969	31.9762	29.6739
310092	1.4211	1.1709	29.4998	29.7958	32.7054	30.6412
310093	1.2376	1.3003	28.0401	29.1288	30.2860	29.1452
310096	2.0682	1.3003	34.4275	34.1524	35.0707	34.5571
310105	1.2642	1.3230	31.9769	30.1069	32.5672	31.5194
310108	1.3920	1.3003	30.1002	33.0172	34.5866	32.5569
310110	1.3054	1.1709	31.2164	33.2246	33.4809	32.6996
310111	1.2374	1.1617	30.7475	31.8393	34.8284	32.5303
310112	1.3369	1.1617	30.4192	31.2372	32.2676	31.3091
310113	1.2469	1.1617	29.6079	31.0436	33.6771	31.5140
310115	1.3257	1.1617	29.6020	29.5320	31.9208	30.3993
310116	1.2613	1.3230	25.6976	29.2748	29.8144	28.1684
310118	1.2995	1.3230	28.8797	31.1803	31.2296	30.4800
310119	1.9452	1.3003	37.7876	43.1238	41.5702	40.9091
310120	1.1067	1.1674	31.4111	29.2535	33.3861	31.2922
310122	***	*	*	*	41.9029	41.9029
310123	***	*	*	*	37.1022	37.1022
310124	***	*	*	*	41.8827	41.8827
310125	***	*	*	*	36.2186	36.2186
310126	1.5770	1.1674	*	*	*	*
310127	2.1663	1.1617	*	*	*	*
320001	1.6904	0.9726	26.9434	29.6182	30.0077	28.9126
320002	1.4655	1.0683	30.5158	32.0477	33.1342	31.9538
320003	1.1309	1.0380	28.1402	27.6222	31.4473	29.2088
320004	1.3372	0.8966	24.9481	24.7803	26.2073	25.3027
320005	1.3986	0.9726	23.8264	24.7543	28.7893	25.7109
320006	1.3191	0.9726	24.2812	26.9080	28.0964	26.5135
320009	1.5653	0.9726	22.8293	32.0116	27.8084	27.0081
320011	1.1591	0.9408	24.2279	25.6693	27.9522	25.9810
320013	1.1095	1.0380	28.9276	22.8283	30.5865	26.9423
320014	1.0798	0.8966	24.5310	27.2806	28.7089	26.9267
320016	1.1809	0.8966	23.5040	25.0835	27.1492	25.3050
320017	1.1952	0.9726	25.0286	31.6357	33.3496	30.1544
320018	1.4708	0.8990	23.2360	26.5109	25.9248	25.0333
320019	1.5804	0.9726	31.5192	27.8067	35.0217	30.9860
320021	1.6072	0.9726	27.2357	26.9918	28.8504	27.7586
320022	1.1616	0.8966	23.7160	23.9595	25.3707	24.3634
320030	1.0991	0.8966	22.1971	21.0378	24.4497	22.6078
320033	1.1954	1.0380	27.6393	31.7114	30.1471	29.8084
320037	1.2522	0.9726	23.3999	24.9657	25.2876	24.5736
320038	1.2776	0.8966	20.1533	21.7022	32.7192	25.2889
320046	***	*	24.3534	*	*	24.3534
320057	0.8729	1.4401	*	*	*	*
320058	0.7716	1.4401	*	*	*	*
320059	0.8739	1.4401	*	*	*	*
320060	0.9509	1.4401	*	*	*	*
320061	0.8807	1.4401	*	*	*	*
320062	0.8932	1.4401	*	*	*	*
320063	1.3138	0.9523	24.4696	25.0031	26.0104	25.1846
320065	1.3090	0.9523	26.6603	27.3163	25.7945	26.5978
320067	0.8771	0.8966	23.7745	24.9865	24.7025	24.5152
320069	1.1009	0.8966	20.9167	22.4128	23.9863	22.4807

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
320070	0.9497	1.4401	*	*	*	*
320074	1.1777	0.9726	22.2175	31.1333	28.4396	27.5523
320079	1.0746	0.9726	25.2105	26.1188	27.6877	26.3861
320083	2.5829	0.9726	28.2114	26.6921	29.5483	28.1910
320084	0.9585	0.8966	17.2511	17.5788	22.7706	19.1172
320085	1.6988	0.8990	24.8752	27.9944	27.4100	26.8654
330001	***	*	33.4718	*	*	33.4718
330002	1.4701	1.3230	31.1924	30.9600	32.1956	31.4367
330003	1.3898	0.8668	22.9945	24.4326	25.2223	24.2261
330004	1.2772	1.0763	26.0445	28.0594	30.2236	28.0555
330005	1.5846	0.9589	29.0124	30.3200	31.5030	30.2924
330006	1.2549	1.3230	31.5370	33.6284	34.2001	33.1191
330008	1.1962	0.9589	21.8198	23.4429	25.2005	23.4731
330009	1.2209	1.3230	35.4986	36.2820	38.9166	36.8498
330010	0.9609	0.8419	19.6920	20.7476	19.7098	20.0039
330011	1.3861	0.9068	21.8008	25.1308	27.4747	24.7766
330013	1.8871	0.8668	24.5162	26.4578	26.8382	25.9719
330014	1.3021	1.3230	38.8123	42.1759	45.7619	42.1087
330016	***	*	28.4391	22.0493	23.0769	24.0047
330019	1.2350	1.3230	34.8266	38.5368	39.7429	37.6992
330023	1.5532	1.2342	31.6208	35.9428	36.4736	34.8790
330024	1.8568	1.3230	37.8398	42.7691	43.2342	41.1289
330025	1.0759	0.9589	20.2776	21.2565	23.2424	21.5975
330027	1.3410	1.3003	39.0717	42.8000	45.1920	42.3263
330028	1.4248	1.3230	34.2709	36.6498	36.2901	35.6915
330029	0.4658	0.9589	19.1589	23.2039	24.0679	21.4788
330030	1.2420	0.8919	22.9937	24.6175	25.3454	24.2688
330033	1.1925	0.8575	22.5680	24.5510	24.8022	23.9493
330036	1.1741	1.3230	28.9409	29.1884	30.3757	29.5029
330037	1.1940	0.8919	20.6904	22.3689	21.9246	21.6480
330041	1.3233	1.3230	36.0286	37.4883	36.9934	36.8228
330043	1.3835	1.2878	34.7480	39.1643	38.8060	37.6024
330044	1.3073	0.8774	24.1907	26.5669	28.2293	26.3415
330045	1.3333	1.2878	36.1893	38.1269	40.0326	38.1677
330046	1.3813	1.3230	44.8494	50.3152	47.4975	47.5047
330047	1.1878	0.8419	24.0678	24.3932	24.9934	24.5012
330049	1.5198	1.2342	29.2904	29.8350	34.8585	31.4556
330053	1.0489	0.8919	18.5289	20.6272	21.8383	20.3286
330055	1.5717	1.3230	38.4839	41.5934	42.2007	40.8306
330056	1.4406	1.3230	37.8444	36.0136	38.8910	37.5789
330057	1.7329	0.8668	24.4680	26.4989	27.7121	26.2563
330058	1.2624	0.8919	21.3727	22.2524	22.6852	22.1185
330059	1.5241	1.3230	39.7387	41.7343	44.9162	42.1521
330061	1.1882	1.3230	33.2848	36.0587	37.8828	35.7862
330062	2.5188	*	21.0464	*	*	21.0464
330064	1.1797	1.3230	36.4276	38.0437	38.2332	37.5276
330065	1.0343	0.9589	23.9128	25.3043	24.4004	24.5186
330066	1.2786	0.8668	24.7941	29.1780	25.8174	26.6320
330067	1.4312	1.2342	26.4243	27.8900	29.2571	27.8298
330072	1.3677	1.3230	36.4336	37.8505	39.6996	37.9172
330073	1.0856	0.8919	20.1490	22.5592	23.4020	22.0432
330074	1.2120	0.8919	21.4274	22.6629	23.4576	22.5315
330075	1.1282	0.9950	22.4188	23.1592	24.2552	23.2899
330078	1.4627	0.9589	23.3981	25.8073	27.2870	25.5271
330079	1.3912	0.9428	22.5237	24.6054	24.9941	24.0665
330080	1.1613	1.3230	39.1724	39.1417	38.9405	39.0850
330084	1.0884	0.8352	21.5455	22.5573	25.6880	23.2872
330085	1.1341	0.9603	23.9568	25.3285	26.6235	25.3048
330086	1.3276	1.3230	29.1784	32.7675	35.5269	32.6267
330088	1.0140	1.2878	31.3973	34.0789	35.3871	33.6067
330090	1.4711	0.8352	23.6174	25.5351	26.8730	25.3567
330091	1.3626	0.9589	23.8063	25.9378	27.0040	25.6221
330094	1.2531	0.9271	23.0001	25.7116	26.9148	25.1933
330095	***	*	31.9873	*	*	31.9873
330096	1.2247	0.8352	22.0337	22.7189	24.2422	22.9958
330097	1.0476	*	20.3189	*	*	20.3189
330100	1.0885	1.3230	34.4621	38.3333	39.6244	37.5351

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
330101	1.9277	1.3230	38.7503	40.1929	43.7944	40.9964
330102	1.3807	0.9589	24.8184	25.3879	26.6887	25.6620
330103	1.1464	0.8352	21.1452	22.8242	24.5585	22.8019
330104	1.3459	1.3230	32.8818	33.7537	35.1076	33.9518
330106	1.7219	1.3003	41.4561	43.8210	46.3657	43.9257
330107	1.2616	1.2878	31.3888	34.9047	35.7384	34.0853
330108	1.1667	0.8352	22.2607	23.2919	23.9368	23.1807
330111	1.0707	0.9589	20.9387	20.3473	40.4349	24.2740
330115	1.1806	0.9950	23.3043	25.2373	23.8235	24.1488
330119	1.7980	1.3230	39.1114	39.0528	42.2901	40.1403
330125	1.7884	0.8919	26.7119	27.2920	28.0584	27.3748
330126	1.3165	1.3003	31.6370	35.2257	36.5689	35.2864
330127	1.3535	1.3230	44.6103	45.3680	45.2993	45.0871
330128	1.2254	1.3230	37.7166	39.5197	41.7790	39.6524
330132	1.1447	0.8483	17.4946	21.0479	21.7648	20.0521
330133	1.3564	1.3230	36.6962	39.3837	38.5228	38.1376
330135	1.1403	1.1625	29.0837	27.9132	32.0525	29.6962
330136	1.5167	0.9603	24.2010	25.8531	26.6680	25.5995
330140	1.8311	0.9950	25.7573	27.6183	29.3461	27.5931
330141	1.3221	1.2878	34.8902	39.4701	39.3741	38.0047
330144	1.0380	0.8352	20.9935	22.9561	23.3874	22.4515
330151	1.1204	0.8352	19.1841	21.7665	19.7959	20.1957
330152	1.2991	1.3230	36.5136	37.6721	38.2079	37.4707
330153	1.7292	0.8668	24.5219	26.4386	28.4446	26.4931
330154	1.7046	*	*	*	*	*
330157	1.3499	0.9603	25.2312	26.5686	27.1432	26.3138
330158	1.5286	1.3230	32.2990	38.2033	41.7010	37.3746
330159	1.3642	0.9950	28.9094	28.2774	31.7835	29.5880
330160	1.5280	1.3230	34.1960	36.6208	37.1915	36.0563
330162	1.2882	1.3230	32.1783	34.9460	37.6226	34.8806
330163	1.1295	0.9589	24.0200	27.1933	28.3910	26.5660
330164	1.4564	0.8919	28.8481	27.7217	27.8746	28.1414
330166	1.0847	0.8352	19.4360	20.4680	20.7121	20.1917
330167	1.7096	1.3003	34.4748	36.7653	39.1251	36.7245
330169	1.3878	1.3230	39.3361	45.3774	46.4939	43.5632
330171	***	*	30.0122	30.4005	35.1577	31.6504
330175	1.1111	0.8612	22.2067	23.8509	24.1005	23.3987
330177	0.9871	0.8352	19.6100	20.6338	22.9834	21.0962
330180	1.2276	0.8668	22.1920	24.3761	25.4170	23.9998
330181	1.2695	1.3003	38.5351	41.4104	43.0977	41.0544
330182	2.3153	1.3003	39.6038	40.9014	41.3033	40.6150
330184	1.4028	1.3230	34.4044	35.8102	39.0437	36.4620
330185	1.2774	1.2878	32.3466	36.3155	38.4002	35.8311
330188	1.2399	0.9589	23.9210	25.1153	27.5988	25.5243
330189	1.3891	0.8668	21.6229	22.3484	22.4383	22.1391
330191	1.2688	0.8668	24.0232	25.5656	26.4328	25.3769
330193	1.3142	1.3230	37.1807	39.9327	39.8910	39.0190
330194	1.7350	1.3230	43.9910	45.5639	46.8880	45.5320
330195	1.7167	1.3230	40.0206	39.7802	41.7885	40.5432
330196	1.2488	1.3230	33.2171	36.7178	38.2525	36.0781
330197	1.0612	0.8352	23.4290	26.8921	25.9872	25.4383
330198	1.3652	1.3003	30.5485	33.4930	34.8985	33.0524
330199	1.1995	1.3230	35.0059	38.6407	40.3948	37.9488
330201	1.5865	1.3230	39.3682	37.2064	42.6707	39.7180
330202	1.2534	1.3230	38.0129	37.4150	37.4158	37.6076
330203	1.4666	0.9950	26.5882	32.1207	34.0499	30.8856
330204	1.3463	1.3230	37.6849	39.6393	41.9953	39.7978
330205	1.1752	1.1625	32.1618	31.9510	33.9418	32.7294
330208	1.1543	1.3230	29.6282	32.1256	33.5287	31.7776
330209	***	*	29.7988	30.2038	*	30.0002
330211	1.1591	0.8352	22.9966	24.4470	25.8752	24.4788
330212	***	*	27.2232	*	*	27.2232
330213	1.1103	0.8352	22.5191	24.4049	27.4890	24.8466
330214	1.9072	1.3230	37.8500	41.8719	42.1339	40.5132
330215	1.3051	0.8774	22.6744	23.7361	23.9583	23.4620
330218	1.0747	0.9950	24.1106	26.9638	26.9982	26.0474
330219	1.7282	0.9589	29.3644	29.8889	32.5658	30.5817

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
330221	1.3569	1.3230	36.5539	39.2080	40.0514	38.6296
330222	1.2879	0.8668	23.9746	25.8507	27.7198	25.9137
330223	1.0006	0.8352	19.4229	23.3669	26.1264	22.8482
330224	1.3195	1.0763	25.7850	27.9231	29.1738	27.6678
330225	1.2331	1.3003	29.2719	32.3585	35.7651	32.4734
330226	1.3402	0.8919	21.8977	24.5646	24.8471	23.8237
330229	1.1912	0.8352	20.6095	21.9356	23.0577	21.8545
330230	1.0056	1.3230	33.3175	37.1298	38.6569	36.3376
330231	1.0910	1.3230	36.9619	40.6697	44.9422	40.8973
330232	1.1619	0.8668	24.4531	26.3313	27.4639	26.1069
330233	1.4122	1.3230	45.5132	47.3497	52.7070	48.3785
330234	2.3951	1.3230	40.6314	48.2306	49.3219	45.8241
330235	1.1932	0.9603	23.3866	27.7031	29.4346	26.7570
330236	1.5608	1.3230	35.6347	40.2386	42.8981	39.6841
330238	1.2617	0.8919	20.8639	21.7435	21.8386	21.4871
330239	1.2553	0.8352	21.5397	22.3854	23.1885	22.3782
330240	1.2125	1.3230	39.9450	43.5753	40.5001	41.3038
330241	1.8062	0.9950	29.0882	30.2304	32.7683	30.7645
330242	1.3309	1.3230	33.6926	37.4870	36.9015	35.9785
330245	1.8746	0.8774	22.8003	26.1811	27.4326	25.5154
330246	1.3355	1.2878	34.6329	37.1611	35.7416	35.8265
330247	0.8998	1.3230	32.2300	35.4980	39.0219	35.4575
330249	1.3506	0.9950	22.9834	25.3246	24.6091	24.2993
330250	1.3317	0.9585	25.1664	27.1606	29.0080	27.1471
330259	1.4233	1.3003	31.9152	35.1514	36.4788	34.5426
330261	1.2665	1.3230	30.7942	33.7834	40.2579	34.7049
330263	1.0274	0.8352	22.4675	23.8738	24.1333	23.5408
330264	1.2911	1.1625	30.0139	30.4701	31.0557	30.7362
330265	1.1847	0.8919	20.4635	21.6477	23.9081	21.9775
330267	1.3602	1.3230	31.5478	32.8541	34.9885	33.1377
330268	0.9185	0.8352	20.9720	25.3567	23.8793	23.3606
330270	2.0320	1.3230	42.2111	57.3596	55.2136	51.3968
330273	1.4013	1.3230	30.4720	37.0157	35.9298	34.5428
330276	1.1000	0.8388	22.2353	24.3300	26.0935	24.2204
330277	1.1770	0.9710	25.3582	26.4535	30.9053	27.3708
330279	1.5223	0.9589	25.2130	27.4539	29.6385	27.5185
330285	2.0056	0.8919	27.9018	30.1928	31.1235	29.7578
330286	1.3671	1.2878	33.3552	35.5895	37.6040	35.5541
330290	1.7307	1.3230	36.9981	39.4690	40.6933	39.0180
330304	1.3100	1.3230	34.5761	36.2845	37.3537	36.1514
330306	1.4163	1.3230	35.6640	36.3552	38.7713	36.9913
330307	1.3298	0.9710	27.5699	29.2529	29.5885	28.8558
330314	***	*	25.5597	26.2719	28.1788	26.6141
330316	1.2422	1.3230	34.8623	34.8567	37.1766	35.6163
330331	1.2558	1.3003	36.1630	39.8402	41.2694	39.1625
330332	1.2696	1.3003	33.3050	35.1646	37.0111	35.2121
330333	***	*	26.1917	*	*	26.1917
330338	***	*	31.3761	37.7497	*	34.6182
330339	0.7538	0.8668	22.6569	23.5786	24.3066	23.5064
330340	1.2556	1.2878	33.9358	37.9000	37.4161	36.3862
330350	1.4785	1.3230	36.6250	41.1339	44.4617	40.7608
330353	1.2406	1.3230	37.6549	45.9692	45.0977	43.0087
330354	2.1152	*	*	*	*	*
330357	1.2623	1.3230	35.5975	38.2286	40.3850	37.9060
330372	1.2748	1.3003	32.6721	36.1840	35.1297	34.7443
330385	1.1071	1.3230	46.3221	48.6175	49.0859	47.9732
330386	1.2175	1.1571	27.9943	29.9366	33.3216	30.4750
330389	1.7369	1.3230	34.7669	37.1862	39.6871	37.2049
330390	1.2347	1.3230	36.0573	36.3842	35.5562	35.9780
330393	1.7487	1.2878	34.8095	38.0619	39.2186	37.4063
330394	1.6374	0.9068	25.2229	27.3388	28.4597	27.0157
330395	1.4395	1.3230	37.3096	36.3921	37.5791	37.0864
330396	1.5369	1.3230	35.0297	37.4998	39.4904	37.3259
330397	1.4390	1.3230	38.4741	37.5682	41.4448	39.1440
330399	1.0823	1.3230	32.3688	34.7394	36.7626	34.6081
330401	1.3638	1.2878	40.6249	37.8559	40.4485	39.6496
330403	0.9812	0.8919	23.1886	25.5163	25.2937	24.6332

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
330404	0.8616	1.3230	*	*	*	*
330405	0.8688	1.3230	*	*	*	*
330406	0.8696	0.8668	*	*	*	*
340001	1.5135	0.9506	25.0041	28.3988	29.5709	27.7170
340002	1.8226	0.9202	27.3349	28.4860	29.6622	28.5097
340003	1.1864	0.8604	23.3066	24.1602	26.0888	24.5124
340004	1.4204	0.9078	25.4474	26.6404	27.5283	26.5365
340005	0.9877	*	22.3814	*	*	22.3814
340008	1.1890	0.9342	26.6314	26.7443	27.7206	27.0545
340010	1.3717	0.9475	24.5666	27.2105	28.7544	26.8571
340011	1.1392	0.8604	19.9484	19.7441	22.0047	20.5590
340012	1.2501	0.8604	22.7189	23.2288	24.7576	23.5973
340013	1.2482	0.9342	23.0261	23.9492	26.3607	24.4161
340014	1.5499	0.9078	25.1872	27.4888	27.8384	26.8919
340015	1.3635	0.9342	26.2276	28.0585	28.3928	27.5641
340016	1.2882	0.8604	23.0359	25.6454	27.2365	25.3118
340017	1.3185	0.9202	23.8229	25.7780	27.5672	25.7234
340018	***	*	23.7243	*	*	23.7243
340020	1.2026	0.8760	23.7995	26.4465	27.5473	25.9059
340021	1.3011	0.9342	26.0995	29.4864	29.3835	28.3680
340023	1.3623	0.9404	24.4896	26.4225	26.2716	25.7465
340024	1.1034	0.8781	22.2522	23.6638	26.4001	24.1341
340025	1.3306	0.9202	21.2276	23.5881	24.0101	22.9999
340027	1.1603	0.9268	23.6326	25.5973	26.3840	25.2711
340028	1.5229	0.9918	26.3298	28.0323	30.7591	28.3770
340030	2.0915	0.9739	29.0122	29.6630	30.4591	29.7351
340032	1.4483	0.9506	26.7475	26.5958	28.7636	27.4150
340035	1.0908	0.8604	23.5476	23.9669	24.6262	24.0395
340036	1.3746	0.9663	25.2077	27.2691	27.3860	26.6516
340037	1.1084	0.8766	21.6411	25.6262	29.0618	25.6372
340038	1.2390	0.8857	14.0713	22.4829	24.2111	19.1097
340039	1.2793	0.9342	27.1275	27.4457	27.8228	27.4762
340040	1.9853	0.9268	26.3325	27.6626	28.7434	27.6121
340041	1.1974	0.8973	23.6600	24.3595	26.8314	25.0117
340042	1.2701	0.8604	23.0236	25.0110	25.6349	24.5586
340045	***	*	23.1918	*	*	23.1918
340047	1.8409	0.9078	25.0605	27.4022	28.4968	27.0295
340049	1.8539	0.9739	30.4827	30.6791	29.6826	30.2360
340050	1.1118	0.9594	24.2533	26.0365	27.5274	25.9407
340051	1.2249	0.8815	23.4091	23.9612	24.4561	23.9489
340053	1.4951	0.9506	27.7261	27.8577	28.9355	28.1746
340055	1.2468	0.8973	24.1057	26.0647	26.5752	25.5723
340060	1.1417	0.9107	22.8657	22.9097	25.1791	23.6619
340061	1.8143	0.9739	27.5594	27.0089	29.8574	28.1792
340064	1.0718	0.8604	22.9143	23.4233	23.9701	23.4394
340068	1.2500	0.9157	21.8830	22.6814	23.6757	22.7411
340069	1.8788	0.9739	27.4473	29.3439	31.4951	29.4988
340070	1.2881	0.9107	24.9033	25.3226	26.6546	25.6458
340071	1.0900	0.9475	25.4537	26.3921	27.9748	26.6157
340072	1.2076	0.8604	23.1163	25.2493	24.1350	24.1644
340073	1.5996	0.9739	30.2061	30.9849	31.6803	30.9681
340075	1.2344	0.8973	26.0226	25.1551	25.1438	25.4402
340084	1.1981	0.9506	21.2580	21.1363	23.1300	21.8526
340085	1.1465	0.9107	23.9793	26.5164	27.9572	26.0805
340087	1.2855	0.8604	22.0070	22.4287	25.4730	23.2835
340090	1.3673	0.9663	23.4541	26.4031	26.7428	25.6227
340091	1.5783	0.9078	25.8266	27.1285	28.8044	27.3003
340096	1.2025	0.9107	25.2169	24.9036	26.5438	25.5729
340097	1.2782	0.8604	24.2127	26.2228	29.8005	26.6208
340098	1.4555	0.9506	27.3308	28.2493	29.7180	28.4477
340099	1.3045	0.8604	20.3683	21.8564	23.9702	22.0907
340104	0.9032	0.8766	15.7521	16.1204	17.0165	16.3439
340106	1.1098	0.8604	22.4894	26.0892	26.1340	24.8429
340107	1.2251	0.9008	22.9698	24.1762	26.5626	24.5944
340109	1.2621	0.8777	23.4419	25.4464	26.6383	25.1802
340113	1.9376	0.9506	28.2568	28.5587	30.3841	29.0850
340114	1.5717	0.9739	26.6813	28.3222	28.1311	27.7304

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
340115	1.6237	0.9739	25.0212	26.7592	27.2781	26.3719
340116	1.7673	0.8973	25.3213	27.5881	29.3698	27.4192
340119	1.3174	0.9506	24.2287	25.6226	29.4470	26.4336
340120	1.0111	0.8604	23.0915	25.9134	25.5399	24.8578
340121	1.1158	0.9326	21.7576	23.1343	23.8854	22.9469
340123	1.3425	0.9107	26.1083	26.0637	28.5669	26.9166
340124	1.0382	0.9475	20.8018	22.2988	23.5480	22.2128
340126	1.2869	0.9475	25.0189	26.9866	28.2247	26.7666
340127	1.1535	0.9739	25.7831	26.4746	28.2161	26.8349
340129	1.2620	0.9342	25.4902	25.7976	26.7606	26.0415
340130	1.3501	0.9506	25.2941	26.1717	28.1594	26.5940
340131	1.5008	0.9268	27.9358	27.4750	28.8542	28.1014
340132	1.1997	0.8604	21.3521	23.5856	24.6162	23.2107
340133	1.0172	0.8912	22.5558	23.4678	24.8579	23.5985
340137	***	*	21.0642	22.1741	28.9672	23.0834
340138	0.8513	0.9739	21.3670	*	*	21.3670
340141	1.6608	0.9326	27.3355	29.3878	29.3171	28.6965
340142	1.1641	0.8604	22.9907	26.6886	27.7555	25.9008
340143	1.5125	0.8973	25.3633	28.0082	27.9777	27.1349
340144	1.2444	0.9342	27.2686	26.1865	27.0150	26.8087
340145	1.1836	0.9342	23.7131	25.8459	26.7482	25.4578
340147	1.2997	0.9475	25.4534	26.9162	28.2626	26.9073
340148	1.4008	0.9078	23.5880	25.3660	25.8325	24.9278
340151	1.1655	0.8656	22.0052	22.7736	23.2158	22.6707
340153	1.8783	0.9506	26.4896	27.6509	28.5979	27.6012
340155	1.4288	0.9739	30.4940	30.3443	30.9501	30.6075
340156	0.8520	1.4401	*	*	*	*
340158	1.1142	0.9326	26.4849	27.7816	27.6526	27.2851
340159	1.2295	0.9739	23.2991	24.2588	25.3108	24.3176
340160	1.3379	0.8604	20.7525	21.7923	23.4631	22.0123
340166	1.2893	0.9506	26.0558	27.1132	28.5395	27.2674
340168	0.3793	0.9326	17.3249	*	*	17.3249
340171	1.1727	0.9506	28.2734	27.8539	27.4701	27.8495
340173	1.2942	0.9739	27.5072	28.3502	30.2815	28.7937
340177	1.0970	*	24.7471	26.7155	*	25.7127
340178	***	*	28.7218	*	*	28.7218
340179	***	*	*	34.1895	*	34.1895
340182	***	*	*	27.8071	*	27.8071
340183	1.0758	0.9506	*	*	*	*
350002	1.8100	0.7311	22.0283	22.4307	23.5869	22.7218
350003	1.1839	0.7311	21.8061	23.9639	24.9975	23.6038
350006	1.5595	0.7311	19.4985	21.2726	22.4626	21.0496
350009	1.1330	0.7944	23.0873	23.8681	24.5737	23.8529
350010	0.9689	0.7309	19.1964	20.1290	20.4198	19.9342
350011	1.9811	0.7944	23.1947	23.8400	24.1135	23.7260
350014	0.9073	0.7309	17.7565	19.1684	17.5837	18.1607
350015	1.6836	0.7311	20.1161	20.9046	21.3342	20.8695
350017	1.2734	0.7309	21.0243	22.4359	21.6187	21.6699
350019	1.6836	0.8049	22.1960	23.2018	24.9615	23.5379
350030	0.9632	0.7309	18.9978	20.2722	22.5976	20.6218
350061	1.4521	*	22.0515	*	*	22.0515
350063	0.8917	1.4401	*	*	*	*
350070	1.8140	0.7944	25.2836	25.2365	26.2454	25.5903
360001	1.4384	0.9661	23.9101	25.8669	28.8623	26.1633
360002	1.2621	0.8838	24.5789	24.5155	25.4859	24.8654
360003	1.7764	0.9661	27.5029	28.9672	30.7812	29.0939
360006	1.8868	1.0025	28.1698	30.1363	30.9806	29.7940
360008	1.3246	0.8725	24.5714	26.2632	27.5683	26.1309
360009	1.6060	0.9308	23.1012	25.0007	27.0618	25.0993
360010	1.2245	0.8807	23.1178	23.7825	24.7352	23.9121
360011	1.2621	0.9821	25.5340	27.6036	31.5587	28.1839
360012	1.3982	1.0025	27.5470	30.1416	31.0526	29.6656
360013	1.0958	0.9308	26.8130	27.0893	29.8412	27.9268
360014	1.1327	0.9821	25.3861	27.1017	27.0743	26.5482
360016	1.4372	0.9661	26.1283	27.8031	29.6298	27.8544
360017	1.7047	1.0025	27.2910	29.8525	31.7081	29.6406
360019	1.3006	0.9216	25.5926	26.9178	27.2997	26.6163

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
360020	1.6208	0.9216	24.4343	23.6400	25.6328	24.5734
360024	***	*	23.5793	*	*	23.5793
360025	1.4534	0.9269	25.5633	27.4533	27.1546	26.7668
360026	1.3232	0.9279	23.5898	25.5379	25.2945	24.8038
360027	1.6134	0.9216	25.4894	27.4454	28.2923	27.0621
360029	1.0868	0.9269	22.7785	24.3216	26.4208	24.5306
360032	1.2095	0.8697	23.2638	25.0034	25.9916	24.7563
360035	1.7331	1.0025	27.5220	30.0172	31.3181	29.6743
360036	1.2087	0.9216	27.6094	27.8343	29.3514	28.2918
360037	1.4271	0.9345	24.3982	29.0046	30.0446	27.6736
360038	1.5417	0.9661	22.8009	25.4274	31.0611	26.3008
360039	1.4955	0.9821	24.0218	23.9783	24.7873	24.2790
360040	1.1430	0.9084	24.0942	24.8569	25.5337	24.8329
360041	1.4959	0.9345	24.1080	26.1522	26.6755	25.6870
360044	1.1369	0.8824	21.8411	21.5619	24.3840	22.5769
360046	1.2023	0.9661	25.0775	25.4673	26.2417	25.5994
360047	1.0860	*	21.7248	*	*	21.7248
360048	1.7561	0.9269	28.8107	29.3415	29.4378	29.2064
360049	***	*	25.8367	26.2222	*	26.0185
360051	1.7003	0.9279	25.7556	26.8501	28.1167	26.9164
360052	1.6091	0.9279	24.5405	26.2066	26.8806	25.8864
360054	1.3924	0.8725	23.0376	22.9359	24.8248	23.5845
360055	1.4142	0.8992	26.3112	27.3941	30.0143	27.8971
360056	1.6185	0.9661	23.1024	26.5318	30.3677	26.6371
360058	1.0590	0.8697	23.4429	23.8119	24.5003	23.9275
360059	1.5014	0.9345	25.3516	29.3624	30.6173	28.4902
360062	1.4838	1.0025	28.6518	31.7422	32.8893	31.2563
360064	1.5933	0.8992	22.2393	25.2336	27.7795	24.9763
360065	1.2190	0.9269	26.3036	28.0405	29.7155	28.0324
360066	1.5166	0.9308	27.3362	27.1436	29.7605	28.0751
360068	1.8866	0.9269	25.8414	26.2065	26.6933	26.2583
360069	1.2464	*	24.2444	*	*	24.2444
360070	1.6587	0.8918	24.8863	27.2389	27.8891	26.6577
360071	1.1157	0.8732	22.0786	23.4619	26.4081	23.9600
360072	1.5232	1.0025	24.4332	25.9589	27.2286	25.9259
360074	1.3002	0.9269	24.9055	25.8959	27.5328	26.1112
360075	1.1472	0.9345	26.8453	26.8925	26.1657	26.5905
360076	1.4890	0.9661	25.9369	28.1013	29.0148	27.7077
360077	1.5236	0.9345	25.6505	28.4449	28.0133	27.3825
360078	1.2784	0.9216	26.1313	25.7885	27.4689	26.4454
360079	1.7865	0.9661	26.0935	27.2437	30.1230	27.8340
360080	1.1302	0.8697	20.8309	21.4526	22.7020	21.7298
360081	1.3518	0.9269	27.5695	29.8366	29.5312	28.9628
360082	1.3503	0.9345	27.1197	29.2561	28.7925	28.4298
360084	1.6077	0.8918	25.8415	27.3917	28.5402	27.2566
360085	2.0267	1.0025	29.0081	31.5800	32.8502	31.2560
360086	1.6601	0.9279	22.1859	25.4218	27.3124	24.9575
360087	1.2859	0.9345	25.4040	29.6579	28.4185	27.8522
360089	1.1454	0.8697	22.7951	25.3465	25.5608	24.5874
360090	1.5834	0.9269	26.7717	29.0199	30.7530	28.8616
360091	1.3288	0.9345	27.5067	25.8657	27.6809	27.0164
360092	1.2652	1.0025	25.6618	25.4954	25.4055	25.5165
360094	***	*	26.6348	*	*	26.6348
360095	1.4011	0.9269	26.1275	26.4635	29.3787	27.2944
360096	1.0887	0.8698	24.6317	25.9275	26.8653	25.8210
360098	1.3625	0.9345	24.8447	25.5973	26.6382	25.7210
360100	1.1996	0.8918	23.0561	25.4523	23.6167	24.0350
360101	1.3614	0.9345	26.6209	27.6030	29.7817	28.0282
360106	***	*	24.1588	*	*	24.1588
360107	1.1208	0.9269	25.9697	24.6095	26.0534	25.5448
360109	1.0704	0.8697	25.4184	26.3131	30.1382	27.2363
360112	1.9950	0.9269	28.6784	30.5715	31.1356	30.1179
360113	1.3132	0.9661	25.6493	26.6556	30.2871	27.4975
360115	1.2830	0.9345	24.0052	25.9841	26.1821	25.4599
360116	1.1956	0.9661	18.0655	25.1717	26.4968	23.3911
360118	1.5295	0.9210	27.7289	27.3884	28.5643	27.8933
360121	1.3608	0.9269	24.5593	27.4442	28.3835	26.7824

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
360123	1.4120	0.9345	22.6523	27.1920	28.0334	25.8336
360125	1.1989	0.8697	22.1096	24.1388	25.9067	23.9904
360128	***	*	21.0067	*	*	21.0067
360130	1.4726	0.9345	22.9762	25.6570	26.3986	25.2275
360131	1.3046	0.8918	24.0496	25.3719	26.6635	25.3529
360132	1.3628	0.9661	25.9453	27.7724	29.4070	27.6756
360133	1.6044	0.9279	24.6208	29.8684	31.7521	28.7271
360134	1.7956	0.9661	29.2974	27.7339	28.5141	28.4865
360137	1.7456	0.9345	26.9522	26.1250	27.6894	26.9256
360141	1.6591	0.8992	27.7085	29.7937	31.1778	29.5401
360142	1.0665	*	22.1610	*	*	22.1610
360143	1.2889	0.9345	24.6306	28.3057	26.9394	26.6732
360144	1.3635	0.9345	25.7079	28.2473	28.9177	27.6781
360145	1.6717	0.9345	25.8268	27.1908	28.1835	27.1041
360147	1.2487	0.8697	24.1953	25.5854	27.5548	25.7876
360148	1.0887	0.8697	26.1947	26.0837	26.3399	26.2104
360150	1.2305	0.9216	24.7667	25.1217	28.2561	26.0004
360151	1.6215	0.8918	24.8629	25.3780	26.5636	25.6137
360152	1.5002	1.0025	27.9147	29.9425	31.5377	29.7875
360153	0.9761	0.8697	19.0226	19.8499	20.2147	19.7391
360155	1.4482	0.9345	25.3909	26.9127	28.9521	27.1128
360156	1.1513	0.8816	24.0509	24.3281	25.0833	24.5012
360159	1.2600	0.9821	33.1613	29.1529	28.6174	30.0448
360161	1.3687	0.8992	24.3792	25.4433	27.0875	25.6058
360163	1.9109	0.9661	26.9728	28.9742	30.0724	28.6652
360170	1.3064	1.0025	24.3620	28.5474	29.5954	27.6590
360172	1.3789	0.9345	26.3501	27.5669	28.8283	27.5900
360174	1.2823	0.9279	24.9990	26.8586	28.3143	26.7384
360175	1.2416	0.9821	26.5949	28.1531	28.3054	27.6959
360177	1.1565	*	24.4712	*	*	24.4712
360179	1.5935	0.9661	28.8645	30.0311	29.8299	29.5974
360180	2.2518	0.9345	26.1514	29.6633	31.4342	29.1126
360185	1.1985	0.8698	23.7173	25.6800	26.1080	25.1949
360187	1.5390	0.9279	24.8173	24.9353	25.7600	25.1883
360189	1.1090	1.0025	24.2136	26.3756	27.5097	26.0254
360192	1.2911	0.9345	26.7577	26.4616	27.5991	26.9459
360195	1.0872	0.9345	26.1281	25.0922	27.6155	26.2467
360197	1.1402	0.9821	27.0896	28.7580	28.9207	28.2672
360203	1.2426	0.8697	22.1414	24.4433	25.3692	24.0014
360210	1.1670	1.0025	27.8415	28.2976	29.6476	28.6031
360211	1.5603	0.8697	22.5449	25.7053	26.5459	24.7616
360212	1.3242	0.9345	25.2756	25.6080	26.6976	25.8756
360218	1.1993	1.0025	27.4288	29.8662	30.0101	29.0792
360230	1.5553	0.9345	27.0223	28.8018	30.0661	28.6838
360234	1.3345	0.9661	24.3625	25.9360	31.0656	27.0903
360236	1.2595	0.9661	35.8143	25.6728	29.5321	29.3317
360239	1.3150	0.9279	25.2474	27.2939	30.7728	27.7368
360241	***	*	24.7001	23.0662	25.7290	24.4912
360242	1.8984	*	*	*	*	*
360245	0.5514	0.9216	19.1884	20.6504	20.3426	20.0855
360247	0.3793	1.0025	19.8891	19.3677	*	19.6148
360253	2.4475	0.9661	30.4276	33.2371	34.3347	32.7151
360259	1.2997	0.9269	25.1338	25.9878	27.2902	26.1980
360260	***	*	27.3903	*	*	27.3903
360261	1.3966	0.8879	22.5431	22.3614	25.6332	23.5172
360262	1.3198	0.9269	27.1680	28.6995	30.1559	28.7640
360263	1.8173	0.9308	20.8884	25.1652	25.4864	23.9919
360264	***	*	*	36.0754	*	36.0754
360265	***	*	*	36.6265	*	36.6265
360266	2.1283	1.0025	*	*	31.7565	31.7565
360267	***	*	*	*	34.0936	34.0936
360268	***	*	*	*	34.0526	34.0526
360269	1.7379	0.9661	*	*	24.8552	24.8552
360270	1.1031	0.8697	*	*	*	*
360271	1.4810	0.9661	*	*	*	*
360273	1.6114	0.8697	*	*	*	*
370001	1.6338	0.8498	27.7245	26.0194	26.8884	26.8557

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
370002	1.2199	0.7702	20.1479	22.0476	23.6886	21.9874
370004	1.1264	0.8967	25.3919	26.7434	26.8521	26.3099
370006	1.2636	0.8498	20.1063	22.4802	23.9935	22.1050
370007	1.0754	0.7702	17.6547	19.4036	20.3706	19.1471
370008	1.4650	0.8754	24.2978	25.3352	26.6563	25.4723
370011	0.9793	0.8754	19.7821	21.9649	22.3391	21.3305
370013	1.5642	0.8754	24.9294	26.5364	27.2667	26.2291
370014	1.0076	0.8531	25.3576	25.9393	26.4488	25.9310
370015	1.0126	0.8498	23.6694	24.7547	25.5815	24.6941
370016	1.6363	0.8754	25.4062	26.7938	29.8284	27.2551
370018	1.5056	0.8498	23.5336	25.3573	24.6868	24.5173
370019	1.2501	0.7702	21.4474	22.0221	25.2814	22.9584
370020	1.3498	0.7702	18.5046	20.8723	22.7566	20.7450
370022	1.2123	0.8071	19.6495	24.6099	22.2289	22.0698
370023	1.3515	0.7792	21.5762	23.5170	24.0376	23.0619
370025	1.2921	0.8498	23.5659	23.9873	24.5547	24.0384
370026	1.4287	0.8754	23.0848	25.8428	25.5172	24.8223
370028	1.8823	0.8754	26.6153	27.8621	28.5619	27.6912
370029	1.1357	0.7702	23.9956	26.8508	28.5309	26.4597
370030	1.0197	0.7702	23.3037	24.1483	25.8212	24.4359
370032	1.4561	0.8754	23.4843	24.8626	26.2642	24.8567
370034	1.2239	0.7702	18.2341	19.5099	20.4106	19.4059
370036	1.1140	0.7702	17.7575	19.2318	19.8162	18.9477
370037	1.6244	0.8754	23.9685	24.9553	25.2350	24.7549
370039	1.0453	0.8498	21.8220	23.0254	23.5745	22.8102
370040	0.9665	0.8053	22.4048	22.8356	26.7395	23.9163
370041	0.8802	0.8498	22.3496	22.6731	22.9834	22.6703
370047	1.3852	0.8754	20.4657	24.1991	24.4766	23.0667
370048	1.0400	0.7702	19.2464	21.4543	22.0627	20.9190
370049	1.3123	0.8754	23.2171	23.8844	22.8755	23.3164
370051	1.0605	0.7702	17.2618	19.8329	19.3222	18.8243
370054	1.2315	0.7702	21.5044	22.4652	25.2142	22.9829
370056	1.8623	0.8406	22.0312	24.3986	25.5453	23.9751
370057	0.9775	0.8498	19.7284	19.8683	22.1337	20.5343
370060	0.9969	0.8498	18.7592	19.9025	23.3858	20.5027
370064	0.8912	*	14.2053	*	*	14.2053
370065	1.0064	0.7798	20.0227	21.2343	23.5815	21.6452
370072	0.8046	0.7960	9.9615	11.7942	13.0963	11.6675
370078	1.5643	0.8498	25.4068	27.8611	26.6972	26.6522
370080	0.8711	0.7702	18.0665	19.9595	22.4113	20.0969
370083	0.8983	0.7753	16.8836	19.2568	20.9878	18.9428
370084	1.0004	0.7702	16.6513	19.6230	20.7326	19.1537
370089	1.3096	0.7702	20.4699	20.6153	22.1523	21.0638
370091	1.5772	0.8498	23.3357	24.1438	25.8697	24.4379
370093	1.6183	0.8754	26.9774	26.0459	27.5356	26.8504
370094	1.4254	0.8754	23.1191	24.5555	26.5265	24.7232
370097	1.3201	0.8406	22.3267	26.3168	26.8138	25.2293
370099	1.0702	0.7702	20.5075	24.9971	26.7206	23.9187
370100	0.9272	0.7802	14.7711	17.9732	19.4002	17.4574
370103	1.0057	0.7702	17.8018	18.8933	19.4273	18.7246
370105	1.9411	0.8754	23.8978	26.7973	26.6399	25.9002
370106	1.4001	0.8754	26.5867	27.8979	28.5957	27.7400
370112	0.9493	0.8053	15.4471	16.0592	16.7888	16.1378
370113	1.1439	0.8715	25.3565	26.9720	26.4608	26.2282
370114	1.5812	0.8498	21.7880	23.0006	25.9841	23.5722
370123	***	*	25.4733	*	*	25.4733
370125	***	*	17.1361	*	*	17.1361
370138	1.0409	0.7702	18.3113	20.2528	22.1675	20.1246
370139	0.9462	0.7702	18.5226	19.4287	20.5156	19.5063
370148	1.5466	0.8754	25.2348	27.0904	28.1933	26.9006
370149	1.2410	0.8754	22.3537	23.3493	23.3423	23.0330
370153	1.1460	0.7702	19.8349	23.2778	24.1667	22.4460
370156	1.0006	0.7823	19.4743	25.2562	23.0104	22.5304
370158	0.9453	0.8754	18.5578	20.7641	21.5228	20.2578
370166	0.8431	0.8498	23.1682	25.1107	24.7251	24.3434
370169	0.8651	0.7865	15.8002	16.8252	16.6752	16.4258
370170	0.9138	1.4401	*	*	*	*

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Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
370171	0.8794	1.4401	*	*	*	*
370172	0.8574	1.4659	*	*	*	*
370173	0.9221	1.4401	*	*	*	*
370174	0.7942	1.4401	*	*	*	*
370176	1.2163	0.8498	25.0509	24.7655	24.9650	24.9272
370177	***	*	14.7193	*	*	14.7193
370178	0.8848	0.7702	14.6070	16.0179	16.0747	15.5714
370179	0.8038	*	23.5794	*	*	23.5794
370180	1.0048	1.4401	*	*	*	*
370183	0.9349	0.8498	21.8147	24.7103	23.8419	23.4256
370190	1.4244	0.8498	33.1137	29.1568	34.6942	32.5212
370192	1.9787	0.8754	31.4930	27.6367	19.0638	24.5971
370196	***	*	22.6824	22.3498	20.8296	21.9384
370199	0.7713	0.8754	26.0450	23.3989	23.7412	24.3357
370200	1.0462	0.7702	17.6317	20.5175	21.7153	19.8071
370201	1.6809	0.8754	23.3550	23.8090	24.2364	23.7986
370202	1.4316	0.8498	25.1181	26.1132	25.7966	25.6803
370203	2.0618	0.8754	23.5190	22.8869	25.7770	24.0068
370206	1.5795	0.8754	26.0912	26.0353	27.5752	26.5860
370210	2.1527	0.8498	21.2682	23.3786	27.2111	23.9630
370211	1.0812	0.8754	26.5345	27.8737	28.6537	27.7381
370212	1.7251	0.8754	21.0758	19.1720	20.3495	20.1565
370213	***	*	29.3777	*	*	29.3777
370214	0.9301	0.7823	*	20.6217	21.0732	20.8619
370215	2.4407	0.8754	32.3589	31.5652	32.4087	32.1115
370216	2.0115	0.8498	*	27.2429	25.8260	26.4854
370217	***	*	*	26.8677	*	26.8677
370218	2.3278	0.8498	*	*	30.3445	30.3445
370220	1.9660	0.8754	*	*	*	*
370222	1.8271	0.8754	*	*	*	*
370223	0.8903	0.8754	*	*	*	*
370224	1.0183	0.8754	*	*	*	*
370225	1.6928	0.8754	*	*	*	*
380001	1.3077	1.1227	30.0103	29.5842	32.0770	30.5857
380002	1.2470	0.9957	27.1861	30.3385	31.5246	29.7051
380004	1.7238	1.1227	30.5172	32.6901	34.5432	32.6120
380005	1.4137	1.0298	30.2210	30.9087	33.2849	31.5054
380007	2.0505	1.1227	33.9969	33.9601	35.1697	34.3879
380008	***	*	25.8356	*	*	25.8356
380009	2.0476	1.1227	31.7042	32.4016	34.5635	32.8913
380010	***	*	30.2957	34.4208	*	32.1520
380014	1.9251	1.0702	29.9648	33.6078	33.1928	32.2201
380017	1.8286	1.1227	32.2447	34.2605	35.3734	33.9502
380018	1.9115	1.0298	28.0701	30.9923	31.8181	30.3581
380020	1.4164	1.1003	28.3563	29.6053	34.6183	30.5329
380021	1.4801	1.1227	29.3295	29.2164	32.6142	30.3295
380022	1.3408	1.0316	29.2642	30.1742	29.6224	29.6961
380023	1.1613	*	26.5439	*	*	26.5439
380025	1.2143	1.1227	33.2105	35.5084	36.4910	35.1206
380027	1.2897	1.0708	25.5161	26.4982	28.0247	26.6752
380029	1.2690	1.0473	26.9967	28.7994	29.4461	28.4964
380033	1.7458	1.1003	30.8767	33.4828	34.0094	32.8334
380037	1.3197	1.1227	30.5818	32.4033	32.7922	31.9693
380038	1.3171	1.1227	34.2303	34.5971	35.1105	34.6431
380039	***	*	32.3959	38.0989	*	34.9720
380040	1.4156	0.9957	32.0103	31.2286	32.9081	32.0782
380047	1.8756	1.0586	29.8627	31.0584	32.8188	31.2891
380050	1.4599	1.0147	25.6190	27.1814	29.7329	27.5476
380051	1.6409	1.0473	29.7219	30.8891	32.8545	31.1841
380052	1.2947	0.9957	24.9476	25.6085	28.6119	26.2866
380056	1.1310	1.0473	25.1475	27.7253	29.1686	27.4847
380060	1.4620	1.1227	30.7041	32.0101	33.8863	32.2260
380061	1.6742	1.1227	29.8217	32.3699	34.5230	32.2744
380071	1.3152	1.1227	30.2304	31.7761	31.0901	31.0382
380075	1.3436	1.0298	29.0368	33.8962	31.6884	31.4882
380081	0.6765	*	21.8850	26.8149	*	24.3121
380082	1.2709	1.1227	32.3002	35.6708	35.7821	34.6175

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
380089	1.3136	1.1227	33.4214	34.6015	35.4850	34.5152
380090	1.3036	1.0708	34.4536	33.0990	35.5535	34.3715
380091	1.3645	1.1227	33.8950	39.9703	40.5066	38.1384
380100	1.6492	1.1227	*	*	*	*
390001	1.5887	0.8346	22.5309	23.6075	24.3251	23.4964
390002	1.2797	0.8391	22.4388	24.7867	25.0860	24.1310
390003	1.1981	0.8339	21.6477	23.3672	24.5099	23.1723
390004	1.5748	0.9231	24.3249	24.4068	25.2424	24.6844
390006	1.9216	0.9116	25.1216	26.8581	28.6926	26.9694
390008	1.1363	0.8399	22.2680	22.8042	22.6297	22.5689
390009	1.8142	0.8503	25.5482	26.7462	26.7234	26.3594
390010	1.1864	0.8391	23.5390	24.5785	24.8196	24.2873
390011	***	*	21.9279	21.4856	20.2291	21.2244
390012	1.2256	1.0892	28.5076	30.7542	32.4856	30.5696
390013	1.3344	0.9116	24.0044	25.0037	26.2323	25.0976
390016	1.2396	0.8698	21.9549	23.2095	24.3488	23.2187
390019	1.1020	1.0004	23.4636	24.0538	25.7515	24.3571
390022	***	*	29.0710	30.3565	29.6308	29.6956
390023	1.2512	1.0892	31.7149	35.4452	34.7787	34.0489
390024	1.0192	1.0892	35.3960	33.5186	38.8750	35.7342
390025	0.4708	1.0892	17.2977	19.1362	20.3878	18.9809
390026	1.2143	1.0892	29.5157	31.8512	31.8309	31.0660
390027	1.7300	1.0892	35.8381	35.5692	39.2158	36.9328
390028	1.6327	0.8391	25.7246	27.1869	27.1451	26.6794
390030	1.1561	1.0004	22.1581	23.6063	24.6343	23.4873
390031	1.2251	0.9414	22.6828	26.2654	27.2033	25.3410
390032	1.2846	0.8391	22.7205	23.9466	24.5243	23.7229
390035	1.1521	1.0892	26.2647	28.4564	29.5417	28.1290
390036	1.4349	0.8391	24.6032	21.6358	24.4917	23.5130
390037	1.4058	0.8391	24.7820	25.4290	25.2296	25.1464
390039	1.1400	0.8339	20.3787	22.0208	23.2300	21.8622
390041	1.2825	0.8391	21.5925	22.9814	24.2257	22.9573
390042	1.3541	0.8391	25.6328	28.3633	28.0996	27.3605
390043	1.2010	0.8339	22.2549	23.2378	24.2087	23.2256
390044	1.6735	1.0766	27.1505	28.7758	29.4057	28.4751
390045	1.5824	0.8339	23.0712	23.9343	24.6495	23.8980
390046	1.6539	0.9650	27.2630	29.6574	30.5115	29.1858
390048	1.0779	0.9116	24.9759	28.5342	28.3152	27.3378
390049	1.5927	1.0004	27.1366	29.6121	30.7431	29.2428
390050	2.0709	0.8391	26.6931	27.2599	27.3481	27.1028
390052	1.1795	0.8386	23.3474	24.9510	25.1462	24.4784
390054	***	*	22.8087	24.4435	27.4805	24.7389
390055	***	*	25.6945	*	*	25.6945
390056	1.0637	0.8375	19.5537	23.5077	23.5821	22.1218
390057	1.3198	1.0892	27.9583	29.7982	30.9198	29.6016
390058	1.3192	0.9231	27.4799	26.9546	27.7296	27.3846
390061	1.4184	0.9650	28.4538	29.1318	30.0597	29.1859
390062	1.1289	0.8350	21.4051	21.2999	21.0713	21.2584
390063	1.8024	0.8503	24.7614	26.4998	26.8381	26.0655
390065	1.2588	1.0031	25.2188	27.6249	29.5654	27.4345
390066	1.4275	0.9116	24.2087	25.9645	25.4407	25.2125
390067	1.8076	0.9231	26.3287	29.7234	30.6128	28.8546
390068	1.3348	0.9650	25.8291	26.7358	29.0962	27.1397
390070	1.4189	1.0892	30.9500	33.3185	34.4935	32.9335
390071	1.0314	0.8339	21.8367	24.6462	24.8467	23.7238
390072	1.0757	0.8339	24.9389	25.3029	26.2568	25.5026
390073	1.7402	0.8350	26.3698	25.7822	26.4083	26.2016
390074	***	*	22.8545	23.6500	25.4098	23.9494
390075	***	*	24.6359	*	*	24.6359
390076	1.3948	1.0892	27.9004	31.8500	32.7671	30.8676
390079	1.8369	0.8775	23.3053	22.5607	24.4452	23.4348
390080	1.3297	1.0892	27.2616	28.7063	29.2645	28.4490
390081	1.2608	1.0892	30.3840	31.7569	33.6247	31.9442
390084	1.0972	0.8339	19.8606	23.2039	24.3372	22.4576
390086	1.6555	0.8339	22.5317	23.5141	25.0992	23.7478
390090	1.9867	0.8391	25.2014	27.3528	27.0122	26.5229
390091	1.1445	0.8698	21.5586	21.7010	23.3562	22.1985

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
390093	1.1573	0.8391	21.4401	22.6082	22.6023	22.2276
390095	1.1958	0.8346	23.6240	22.6150	24.6290	23.6292
390096	1.5985	1.0766	27.0763	28.8258	28.6055	28.1718
390097	1.2460	1.0892	25.6660	26.1741	27.9858	26.5902
390100	1.7084	0.9650	27.7208	30.0132	30.0234	29.3208
390101	1.2968	0.9426	21.9418	23.1497	24.8377	23.3533
390102	1.4439	0.8391	24.8898	24.8369	24.4589	24.7141
390103	0.8439	0.8391	20.6775	20.5741	20.4446	20.5656
390104	1.0867	0.8339	19.6428	19.2326	19.6630	19.5084
390107	1.5235	0.8391	24.1386	24.1159	24.6565	24.3172
390108	1.2286	1.0892	27.2661	27.8171	28.5928	27.9029
390109	1.1558	*	19.9156	*	*	19.9156
390110	1.6017	0.8391	23.9808	27.7311	25.3407	25.6183
390111	2.1688	1.0892	32.6510	34.2990	34.8756	33.9665
390112	1.2270	0.8339	19.2126	20.2380	21.5439	20.3238
390113	1.2914	0.8698	22.2591	23.3686	24.2593	23.3085
390114	1.5658	0.8391	24.0473	26.9620	27.9184	26.3018
390115	1.4567	1.0892	27.7333	29.6905	30.8063	29.4311
390116	1.2415	1.0892	30.2722	32.2513	33.2562	31.9776
390117	1.1678	0.8341	20.3946	20.7821	21.5038	20.9016
390118	1.1721	0.8339	21.5001	20.5614	21.8917	21.3378
390119	1.3034	0.8346	22.2746	23.0928	24.3245	23.2322
390121	***	*	23.1408	25.4826	*	24.2748
390122	1.0755	0.8392	22.5786	23.1866	23.3220	23.0325
390123	1.1927	1.0892	28.6269	32.4528	34.0062	31.6506
390125	1.2633	0.8361	20.9456	22.4033	22.8816	22.0906
390127	1.3311	1.0892	30.9374	31.9091	33.6557	32.1824
390128	1.2534	0.8391	23.1539	24.1628	24.1390	23.8230
390130	1.2885	0.8339	24.0685	23.0592	23.2504	23.4713
390131	1.3317	0.8391	22.6306	23.0577	23.5783	23.1078
390132	1.4484	1.0892	27.7250	29.6396	31.1168	29.5034
390133	1.7272	1.0766	28.7162	31.1083	32.9812	31.0147
390135	***	*	24.4738	*	*	24.4738
390136	***	*	22.1415	23.9813	*	23.0891
390137	1.4885	0.8346	23.4877	24.2878	26.1457	24.6489
390138	1.1933	0.9116	24.2769	25.3410	27.4231	25.7128
390139	1.3716	1.0892	30.4246	34.1447	34.0836	32.9187
390142	1.5243	1.0892	32.5786	33.8224	34.5773	33.7222
390145	1.5357	0.8391	23.8041	24.6672	25.6980	24.7299
390146	1.2173	0.8361	25.2460	22.6752	25.1805	24.3872
390147	1.3581	0.8391	25.0971	26.8522	28.6606	26.8148
390150	1.1275	0.8370	24.1855	22.8228	22.7668	23.2856
390151	1.3563	1.1017	27.1539	29.9254	31.4067	29.5927
390153	1.3460	1.0892	30.0585	32.8234	33.2427	32.1641
390154	1.2246	0.8339	20.6982	22.8391	23.3559	22.2880
390156	1.3798	1.0892	31.2571	32.2688	32.8999	32.1222
390157	1.2696	0.8391	22.7493	21.5923	22.1112	22.1491
390160	1.2522	0.8391	21.4877	24.0208	22.9696	22.8166
390162	1.4950	1.1571	30.0900	35.5057	34.5809	33.2587
390163	1.2334	0.8391	22.1741	23.2055	22.8341	22.7283
390164	2.1784	0.8391	26.4971	26.3087	27.1950	26.6937
390166	1.1701	0.8391	24.9810	20.9272	23.3255	23.1378
390168	1.5193	0.8391	24.5820	26.1365	26.9816	25.9249
390169	1.4279	0.8346	27.2242	26.5514	26.2643	26.6875
390173	1.1827	0.8339	22.8220	23.9927	25.6455	24.1670
390174	1.7008	1.0892	32.6265	34.2069	34.8999	33.9342
390176	1.0494	0.8391	*	23.9779	24.1247	24.0545
390178	1.3615	0.8992	20.7270	22.6006	23.1452	22.1438
390179	1.4427	1.0892	27.2222	28.0688	30.1219	28.5194
390180	1.4067	1.0892	32.4375	34.9832	35.5291	34.3065
390181	1.1036	0.8623	24.4573	25.9871	26.6021	25.6300
390183	1.1415	0.8339	25.6554	27.0122	27.8358	26.8139
390184	1.1037	0.8391	22.5519	22.7451	23.9736	23.0652
390185	1.2675	0.8339	23.0202	25.4256	27.1119	25.2267
390189	1.1565	0.8339	22.3722	22.6796	23.6215	22.9388
390191	1.1480	*	20.8761	*	*	20.8761
390192	0.9882	0.8346	21.2619	20.5459	23.6171	21.8230

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
390193	***	*	20.1024	*	*	20.1024
390194	1.1194	1.0004	25.4235	27.5890	26.3152	26.4435
390195	1.6293	1.0892	31.0019	34.2980	34.5594	33.3475
390196	1.6590	*	*	*	*	*
390197	1.3808	1.0004	25.7739	26.8270	27.2455	26.6103
390198	1.0933	0.8503	18.7222	20.5979	20.4350	19.9087
390199	1.1701	0.8339	21.3157	22.3224	23.0046	22.2038
390200	***	*	23.7471	*	*	23.7471
390201	1.3003	0.9509	26.3658	27.0054	27.3542	26.9245
390203	1.6204	1.0892	28.9054	29.4930	29.1370	29.1781
390204	1.3007	1.0892	28.6829	29.5251	30.7346	29.6944
390211	1.2565	0.8992	23.1450	25.1689	26.5052	24.9533
390215	***	*	28.0403	*	*	28.0403
390217	1.2433	0.8391	24.3610	23.5879	24.1886	24.0513
390219	1.3175	0.8391	25.1705	25.4886	26.1196	25.5763
390220	1.1218	1.0892	41.6138	28.9128	30.7435	32.7176
390222	1.2954	1.0892	28.7488	30.9464	31.7361	30.5072
390223	2.0325	1.0892	27.6407	30.2523	34.3280	30.7325
390224	***	*	18.7624	*	*	18.7624
390225	1.2242	0.9650	24.9391	27.5803	27.2555	26.6147
390226	1.7798	1.0892	28.5890	32.6658	32.6508	31.2960
390228	1.3965	0.8391	23.3078	23.9845	24.2242	23.8474
390231	1.4031	1.0892	29.2653	30.9339	32.8353	30.9985
390233	1.3802	0.9426	24.8690	25.6904	27.2597	25.9607
390236	0.9660	0.8342	21.9169	22.1144	23.1290	22.3771
390237	1.6164	0.8346	26.9533	27.4944	28.4337	27.5819
390246	1.1272	0.8339	20.1581	25.1956	26.0179	23.4882
390256	1.9087	0.9231	26.3619	28.0617	28.8970	27.8209
390258	1.5082	1.0892	29.4626	30.4142	31.7164	30.6076
390263	1.5401	1.0004	26.0170	28.5864	29.9850	28.3002
390265	1.5075	0.8391	23.4836	24.0675	25.0166	24.2007
390266	1.1586	0.8992	20.3918	20.8789	22.2228	21.1792
390267	1.2789	0.8391	23.1051	24.2428	24.8309	24.0577
390268	1.3894	0.8620	25.0021	25.6643	26.7342	25.8430
390270	1.6238	0.8346	24.1496	24.9510	26.5010	25.2638
390272	0.5343	1.0892	*	*	*	*
390278	0.5326	1.0892	23.6843	26.6664	28.6323	26.3012
390279	***	*	17.0012	*	*	17.0012
390285	1.4953	1.0892	35.0426	36.7163	37.6669	36.3991
390286	1.1875	1.0892	28.1761	29.5281	31.3393	29.6278
390287	***	*	37.6569	39.3176	42.2401	39.3146
390288	***	*	29.7287	30.9701	*	30.3388
390289	***	*	28.8826	30.7583	*	29.8023
390290	1.8423	1.0892	37.9040	38.3776	41.1426	39.1287
390301	***	*	30.9836	*	*	30.9836
390302	2.0384	1.0892	*	*	*	*
390303	***	*	*	27.5580	*	27.5580
390304	1.2278	1.0892	*	30.4832	32.1633	31.3748
390305	***	*	*	*	29.3217	29.3217
390306	***	*	*	*	40.3789	40.3789
390307	1.9734	0.8992	*	*	24.5393	24.5393
390308	***	*	*	*	36.1737	36.1737
390309	***	*	*	*	37.8924	37.8924
390310	***	*	*	*	44.3991	44.3991
390311	2.0736	1.0892	*	*	*	*
390312	1.1657	1.0892	*	*	*	*
390313	1.1458	0.9414	*	*	*	*
400001	1.2874	0.4526	13.1847	13.9386	14.9151	14.0372
400002	1.8558	0.4262	16.7582	15.3833	12.9440	14.8789
400003	1.3831	0.4262	12.8329	13.9258	15.7906	14.1890
400004	1.2271	0.4526	14.3108	12.0923	12.5928	12.8941
400005	1.1236	0.4526	10.7207	10.3505	11.1152	10.7266
400006	1.1844	0.4526	9.2265	8.1841	8.1381	8.5089
400007	1.2015	0.4526	9.2463	11.8203	12.0743	11.0862
400009	1.0128	0.2944	9.3116	9.3834	9.5114	9.4053
400010	0.9325	0.3345	10.0962	9.8132	10.7993	10.2160
400011	1.0606	0.4526	8.5534	9.6641	8.5503	8.9391

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
400012	1.4705	0.4526	8.3802	12.3362	10.1156	10.1141
400013	1.2469	0.4526	10.3347	11.1414	11.4222	10.9912
400014	1.3700	0.3657	12.2169	10.5286	9.9395	10.8301
400015	1.3221	0.4526	15.6349	13.7043	22.2017	17.0466
400016	1.3958	0.4526	14.7607	16.6472	16.1931	15.8694
400017	0.9861	0.4526	10.2734	10.3123	9.9185	10.1744
400018	1.1688	0.4526	11.6165	11.9184	12.3942	11.9804
400019	1.4371	0.4526	12.8029	12.8380	14.7133	13.3474
400021	1.4337	0.4603	14.1534	14.4549	13.9217	14.1634
400022	1.4167	0.4262	15.9246	14.9089	15.3625	15.3797
400024	0.8912	0.3657	12.4648	10.8439	12.6226	11.9953
400026	1.0823	0.2944	5.8200	9.9262	7.1179	7.2042
400028	1.0970	0.4262	10.9808	11.3260	10.6711	10.9928
400032	1.1389	0.4526	10.2652	10.3736	10.7141	10.4546
400044	1.2868	0.4262	13.7509	14.6420	11.3551	13.0226
400048	1.1723	0.4526	10.4266	9.6416	9.6860	9.9022
400061	1.9960	0.4526	18.9123	18.1303	18.0093	18.3233
400079	1.2424	0.3345	12.7825	9.5296	10.4599	10.7211
400087	1.2021	0.4526	10.6849	11.0377	11.4162	11.0323
400098	1.3680	0.4526	12.8230	13.8034	13.7878	13.3737
400102	1.3126	0.4526	10.2677	10.5879	12.1761	10.9324
400103	1.7531	0.3657	9.3859	10.6971	11.7488	10.5156
400104	1.1987	0.4526	9.3854	11.4322	12.8404	11.2161
400105	1.1555	0.4526	14.0219	15.6626	16.9029	15.5351
400106	1.1103	0.4526	11.4507	13.4097	12.9272	12.5586
400109	1.4443	0.4526	14.2111	14.4386	14.8208	14.4938
400110	1.2255	0.3201	12.3449	11.1812	9.9278	11.1280
400111	1.1556	0.3345	14.5029	14.1718	10.2141	12.6681
400112	1.2246	0.4526	19.3945	10.1512	13.5177	13.3103
400113	1.2963	0.4262	9.6778	10.5305	10.9503	10.3752
400114	1.1415	0.4526	11.5478	10.1379	10.8913	10.8234
400115	1.0288	0.4526	13.7392	12.0713	9.6200	11.5296
400117	1.1103	0.4526	12.7600	9.5929	11.6258	11.1092
400118	1.2476	0.4526	12.5743	12.8692	12.7861	12.7465
400120	1.3549	0.4526	12.7955	13.4069	14.0817	13.4544
400121	1.0490	0.4526	8.2197	9.7427	9.1826	9.0004
400122	1.9051	0.4526	11.2324	8.9478	9.5814	10.3491
400123	1.2168	0.3657	12.3041	12.8317	12.5609	12.5625
400124	2.7715	0.4526	16.1812	17.2139	17.9140	17.1104
400125	1.2089	0.4366	11.6386	11.9787	13.5394	12.3736
400126	1.2018	0.4603	9.8008	14.1062	16.5726	12.5522
400127	1.7702	0.4526	*	17.8303	20.7775	19.5304
400128	1.0772	0.4526	*	*	12.3520	12.3520
410001	1.3001	1.1304	28.0816	29.0877	30.0315	29.0712
410004	1.2507	1.1304	27.4209	29.4953	31.3023	29.3085
410005	1.2514	1.1304	30.1606	28.1141	31.4387	29.8829
410006	1.3446	1.0533	29.4395	30.1855	32.8456	30.8320
410007	1.6590	1.1304	31.8548	33.2896	32.0730	32.4076
410008	1.2339	1.0533	29.6092	30.9505	32.5889	31.0411
410009	1.2457	1.0533	29.4094	31.7300	32.8422	31.3631
410010	1.1816	1.1304	32.8599	32.0704	32.7379	32.5467
410011	1.3898	1.1304	30.3787	33.8781	30.1941	31.4075
410012	1.6846	1.1304	32.6009	33.6072	37.0299	34.4554
410013	1.2109	1.1733	35.4624	35.8075	41.0010	37.4278
420002	1.5892	0.9506	28.2848	29.5592	30.5111	29.4596
420004	1.9968	0.9102	27.2620	28.1455	28.9250	28.1335
420005	1.1298	0.8708	23.1943	25.0420	24.6968	24.3261
420006	1.1030	0.9102	24.0811	26.3293	27.7764	26.0571
420007	1.6204	0.9404	25.2650	26.8165	29.0901	27.0758
420009	1.3844	0.9404	25.5079	27.0147	29.9378	27.4921
420010	1.1454	0.8708	23.4562	25.1452	25.5710	24.7565
420011	1.1700	0.9637	21.4029	22.1787	25.5130	23.0432
420015	1.3564	0.9637	26.2154	24.1685	26.3499	25.5708
420016	0.9729	0.8708	17.1229	21.6266	22.5681	20.3115
420018	1.8351	0.8830	24.8024	25.6687	27.5563	26.0448
420019	1.0975	0.8866	22.5312	22.5489	25.4954	23.3967
420020	1.2783	0.9102	25.8883	28.4344	27.5000	27.2263

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
420023	1.6931	0.9637	26.7263	27.4589	28.9321	27.7092
420026	1.8832	0.8830	27.4814	27.8986	28.0647	27.8209
420027	1.5863	0.9404	25.1692	26.4472	28.5621	26.7375
420030	1.2459	0.9102	26.0079	27.8435	28.4433	27.4518
420033	1.1206	0.9637	31.8759	30.4162	31.1608	31.1288
420036	1.2393	0.9342	22.8294	23.8742	24.6505	23.7918
420037	1.2991	0.9637	29.4156	29.8321	30.9556	30.0757
420038	1.2506	0.9637	24.2259	24.6642	26.6435	25.1658
420039	1.1502	0.9395	25.1148	28.2220	26.5582	26.6294
420043	1.1014	0.8865	23.0555	24.0971	25.7951	24.3487
420048	1.2704	0.8830	24.1923	25.9610	26.9625	25.7393
420049	1.2503	0.8708	23.9722	26.0953	25.7060	25.2650
420051	1.6618	0.8708	24.8026	25.9056	26.4710	25.7419
420053	1.1266	0.8743	22.2825	23.2246	24.4793	23.3671
420054	1.1343	0.8708	24.8931	25.6779	25.6444	25.3992
420055	1.0788	0.8708	21.9764	24.0965	25.1738	23.7710
420056	1.3331	0.8708	21.6963	27.7250	28.4512	26.0628
420057	1.1850	0.8708	23.4312	24.9313	26.2489	24.8975
420062	1.0478	0.9342	25.9526	26.7467	25.9569	26.2263
420064	1.1878	0.8708	23.3610	24.3540	24.6507	24.1129
420065	1.4423	0.9102	24.5715	25.5483	26.8118	25.6580
420066	1.0102	0.8708	23.9049	25.1062	25.0932	24.7340
420067	1.3642	0.8891	25.0345	25.8561	26.5658	25.8410
420068	1.3736	0.9599	23.4248	25.6857	27.7315	25.6542
420069	1.1727	0.8708	20.5546	22.3445	23.7494	22.2412
420070	1.3002	0.8899	23.4355	24.7899	27.5988	25.3447
420071	1.4324	0.9404	24.9418	25.2862	27.6371	25.9946
420072	1.0648	0.8708	18.6742	17.8019	21.6587	19.2819
420073	1.3853	0.8830	24.5813	25.5204	26.1120	25.4570
420078	1.9234	0.9637	28.9112	29.5135	30.9001	29.7803
420079	1.4833	0.9102	25.4935	27.5439	28.6374	27.2418
420080	1.4399	0.8891	28.4735	28.6060	31.5670	29.4700
420082	1.5176	0.9599	29.8528	31.2671	33.9874	31.6537
420083	1.4753	0.9404	27.1322	26.4932	28.9007	27.5465
420085	1.5552	0.9157	26.8692	27.8386	29.1127	27.9342
420086	1.4543	0.8830	25.8869	28.0485	27.9523	27.3375
420087	1.8316	0.9102	24.3609	25.4697	26.8409	25.5481
420089	1.3966	0.9102	26.0074	28.1855	29.5862	27.9480
420091	1.4220	0.8708	26.9214	26.0592	27.2520	26.7465
420093	***	*	27.4767	28.0765	33.0474	29.2458
420098	1.1886	0.8708	*	30.7532	27.1939	28.6282
420099	***	*	*	*	30.3089	30.3089
420101	1.1325	0.8708	*	*	*	*
430005	1.2980	0.8344	22.3272	22.4111	23.8694	22.8728
430008	1.1437	0.8879	23.3790	24.4277	26.0873	24.5250
430012	1.3084	0.9373	24.0850	24.0326	25.2030	24.4262
430013	1.1850	0.9373	25.1378	25.9828	27.0427	26.0549
430014	1.4182	0.8344	26.4964	26.8752	27.9288	27.1027
430015	1.2660	0.8344	22.7947	23.6296	26.5787	24.3442
430016	1.6461	0.9554	27.8453	28.9376	32.8765	29.8590
430027	1.7908	0.9554	26.2139	26.6044	27.5759	26.8179
430031	***	*	16.0346	*	*	16.0346
430047	1.0090	*	18.8982	*	*	18.8982
430048	1.2826	0.8473	23.0782	24.1969	25.1715	24.1632
430060	0.8255	0.8344	*	13.2618	*	13.2618
430064	1.0352	0.8344	17.5376	18.3125	16.4916	17.3487
430077	1.8125	0.8686	25.1763	25.8572	27.2116	26.0778
430081	0.8813	1.4401	*	*	*	*
430082	0.8159	1.4401	*	*	*	*
430083	0.8773	1.4401	*	*	*	*
430084	0.9191	1.4401	*	*	*	*
430085	0.8887	1.4401	*	*	*	*
430089	1.8643	0.9083	22.5625	22.3335	23.2467	22.7178
430090	1.4823	0.9554	25.8460	26.4862	29.0197	27.2002
430091	2.1535	0.8686	24.3021	25.1105	24.7274	24.7230
430092	1.8619	0.8344	20.9486	21.6478	21.9197	21.5136
430093	0.8376	0.8686	29.5244	27.5326	26.0232	27.6512

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
430094	1.6473	0.8473	18.9099	22.9091	23.2894	21.6362
430095	2.4536	0.9554	28.1749	31.3409	32.2326	30.5986
430096	1.8925	0.8344	21.6997	21.6713	24.6041	22.6698
440001	1.1429	0.7918	19.3100	21.2398	21.5755	20.7297
440002	1.7517	0.8964	24.6664	25.7434	26.3802	25.6181
440003	1.3286	0.9619	25.9209	28.4862	28.3557	27.6397
440006	1.5104	0.9619	28.5951	29.7146	31.5533	29.9429
440007	1.0213	0.8137	25.8236	19.9754	18.8273	20.7872
440008	1.0650	0.8435	23.4301	23.2126	27.3732	24.8411
440009	1.2235	0.7918	21.5970	23.9279	23.8148	23.1556
440010	0.9454	0.7918	17.1803	19.3669	19.6231	18.7390
440011	1.3468	0.8013	22.5068	23.6154	23.6698	23.2734
440012	1.5824	0.7918	22.3029	24.0169	23.7871	23.3709
440015	1.8744	0.8013	23.7422	25.0430	26.0601	24.9723
440016	1.0058	0.8062	22.1645	23.0350	24.5812	23.2195
440017	1.8259	0.7918	22.9364	25.0588	24.6707	24.2298
440018	1.1293	0.7918	23.3445	23.2107	25.0780	23.9426
440019	1.7495	0.8013	25.2553	25.3592	25.2230	25.2804
440020	1.0946	0.8725	23.9475	24.0995	24.7785	24.2807
440024	1.2188	0.8963	23.2717	23.9745	24.7705	24.0299
440025	1.1297	0.8604	20.6798	22.5407	22.6571	21.9869
440026	0.6838	0.9619	26.8986	28.0349	26.8153	27.2470
440029	1.3911	0.9619	28.0779	30.1204	31.2310	29.8864
440030	1.3252	0.7974	22.1217	23.7670	22.2607	22.7230
440031	1.1881	0.7937	19.6684	20.8964	22.6790	21.0762
440032	1.2202	0.7918	18.5277	19.7150	21.0380	19.7424
440033	1.0340	0.7945	20.7917	21.1087	22.7991	21.5097
440034	1.6264	0.8013	23.5403	24.6994	25.5061	24.6085
440035	1.4163	0.9364	24.3752	25.9613	26.2451	25.5505
440039	2.1878	0.9619	28.4678	29.8611	30.1790	29.5489
440040	0.9037	0.7918	17.8509	20.8637	20.8817	19.8822
440041	0.9131	*	17.9409	*	*	17.9409
440046	1.2541	0.9619	26.1341	27.9539	29.7377	27.9640
440047	0.9019	0.8256	21.4280	21.7892	22.8323	22.0491
440048	1.8393	0.9314	27.7560	29.4789	29.3187	28.8706
440049	1.6394	0.9314	25.3043	26.4772	28.8742	26.9261
440050	1.3557	0.7918	23.1363	24.4616	24.9694	24.2238
440051	0.9547	0.8000	21.9108	23.9253	23.4866	23.1295
440052	0.9967	0.7918	21.1133	22.8016	22.6128	22.1807
440053	1.2686	0.9619	25.4345	27.1197	27.8180	26.7576
440054	1.1313	0.7918	21.4400	23.5137	23.7931	22.9260
440056	1.1627	0.8013	22.1067	22.7820	23.2313	22.7147
440057	1.0901	0.7939	16.4451	16.6346	17.2176	16.7762
440058	1.1779	0.7918	22.9263	24.3522	26.0706	24.4599
440059	1.4606	0.7918	26.3551	28.3565	27.9467	27.5547
440060	1.1376	0.8435	23.3014	24.1024	25.0795	24.2308
440061	1.1227	0.7918	21.8274	23.9678	23.7360	23.1109
440063	1.5877	0.7918	22.3256	24.2566	23.9644	23.5409
440064	1.0095	0.8963	22.0955	23.7176	26.1246	23.9669
440065	1.2649	0.9619	22.3247	24.6169	25.8536	24.2955
440067	1.1060	0.7974	23.1089	24.4772	24.6553	24.0987
440068	1.1561	0.8963	24.5972	24.8146	26.1071	25.1514
440070	0.9795	0.8027	19.4372	20.0938	21.9166	20.5440
440072	1.1052	0.8964	27.1442	23.9563	25.7089	25.4880
440073	1.4690	0.9364	23.9198	26.3570	27.6154	25.9562
440081	1.1988	0.7970	19.7878	20.7125	20.7688	20.4356
440082	2.1154	0.9619	27.9724	30.6115	32.2479	30.2297
440083	0.9665	0.7918	17.3329	25.6099	23.6356	22.2415
440084	1.1850	0.7943	16.3738	18.6043	18.8699	17.9500
440091	1.7521	0.8963	25.6797	26.5687	28.1989	26.8422
440102	1.1443	0.7918	17.5261	20.7363	21.6762	19.7559
440104	1.7681	0.8963	25.3739	26.5741	27.9756	26.6322
440105	0.8903	0.7918	22.3438	22.9372	22.7962	22.6994
440109	0.9688	0.7988	18.6720	20.8924	21.4629	20.4136
440110	1.1516	0.8013	21.3287	20.9179	22.5929	21.6231
440111	1.2941	0.9619	28.5705	29.0975	28.8453	28.8380
440114	***	*	24.0146	*	*	24.0146

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
440115	1.0084	0.8256	21.7830	23.1409	23.7107	22.8901
440120	1.5807	0.8013	25.5961	25.7161	24.7572	25.3531
440125	1.6030	0.8013	22.4196	22.8097	23.6328	22.9331
440130	1.1080	0.7918	23.4517	23.9955	25.1262	24.1968
440131	1.2044	0.9314	24.9599	25.6666	26.9649	25.8560
440132	1.2396	0.7918	21.5085	23.9410	24.0708	23.2170
440133	1.7123	0.9619	26.2422	29.2829	29.6093	28.3398
440135	0.9966	0.7918	26.6615	28.1925	27.7037	27.5222
440137	1.0789	0.8656	20.6663	22.2538	22.9547	21.8990
440141	0.9681	0.7918	21.3314	24.2406	24.9917	23.5753
440144	1.3047	0.9364	23.3828	23.9241	25.2293	24.2131
440145	1.0761	*	20.7875	*	*	20.7875
440147	***	*	31.4012	33.1756	34.8199	33.1562
440148	1.1125	0.9364	24.6412	23.9810	22.6188	23.6904
440149	***	*	20.4563	*	*	20.4563
440150	1.3915	0.9619	26.8308	28.1012	29.4381	28.1244
440151	1.1731	0.9364	23.9808	27.1729	28.2203	26.4238
440152	1.9330	0.9314	26.5513	27.1877	28.4612	27.4397
440153	1.0815	0.7925	22.2846	23.6473	24.9388	23.5617
440156	1.6487	0.8963	26.9689	27.7309	28.5645	27.7809
440159	1.5112	0.9314	22.8645	26.9098	25.8289	25.2934
440161	1.8713	0.9619	28.6971	28.7074	29.9894	29.1537
440162	***	*	21.1418	27.6837	24.8705	24.4635
440166	***	*	31.0779	35.3064	*	32.7296
440168	0.9656	0.9314	22.8768	28.1215	29.4028	26.9618
440173	1.4384	0.8013	22.8846	23.1167	24.0621	23.3817
440174	0.8948	0.8230	22.0974	25.4829	26.2087	24.7287
440175	1.0346	0.9364	22.7299	24.4848	24.7869	23.9712
440176	1.2755	0.7918	23.6659	22.9631	23.7695	23.4768
440180	1.2910	0.7945	23.3808	24.9841	22.3070	23.4474
440181	0.9194	0.8283	22.7151	24.8857	25.9450	24.5707
440182	0.9950	0.8062	22.3612	24.3302	25.0111	23.9834
440183	1.5965	0.9314	27.1515	29.1982	30.6599	28.9846
440184	0.9643	0.7918	22.3475	24.5786	23.3970	23.4193
440185	1.1494	0.8963	23.9052	25.3817	26.7473	25.4020
440186	0.9670	0.9619	25.7445	27.3733	28.9124	27.3831
440187	1.0855	0.7918	21.3252	24.0723	25.8238	23.7554
440189	1.3573	0.8592	27.5435	28.2621	28.8974	28.1769
440192	1.0837	0.9364	25.7495	27.3917	29.6272	27.6374
440193	1.3504	0.9619	24.4299	24.3622	25.2124	24.6713
440194	1.3046	0.9619	26.6527	29.4706	30.8593	29.1025
440197	1.3634	0.9619	27.1534	29.4275	30.1184	28.8521
440200	0.9727	0.9619	17.7491	21.1860	23.8654	20.9536
440203	***	*	19.3864	23.7451	17.9041	20.1684
440217	1.3218	0.9314	28.5968	28.8641	29.8888	29.1071
440218	2.2001	0.9619	24.6465	23.7257	18.7275	22.2604
440222	1.0526	0.9314	29.7292	28.4664	29.0062	29.0425
440224	0.8974	0.9619	*	*	*	*
440225	0.7954	0.8013	*	24.8328	27.8860	26.2410
440226	1.5468	0.8013	*	26.5831	27.1348	26.8601
440227	1.3258	0.9619	*	*	30.7785	30.7785
440228	1.4404	0.9314	*	*	28.3687	28.3687
450002	1.4187	0.9141	25.7171	28.0936	28.8521	27.4831
450005	1.0716	0.8616	23.5576	24.4933	24.5405	24.1601
450007	1.3075	0.8896	20.7321	23.0026	23.9490	22.5725
450008	1.2921	0.8304	22.9669	24.4701	24.5965	24.0253
450010	1.6531	0.8203	23.7529	25.5503	25.5582	24.9684
450011	1.6887	0.9172	24.8831	26.7418	28.5329	26.6975
450015	1.5297	0.9786	27.4012	29.9193	29.4919	28.9240
450018	1.5190	0.9997	26.7999	30.2383	30.7852	29.2611
450020	0.9712	*	18.3047	*	*	18.3047
450021	1.8798	0.9786	29.1350	29.5658	31.3107	29.9776
450023	1.4773	0.8198	22.0558	25.4450	25.5346	24.3069
450024	1.6700	0.9141	24.4195	26.9113	28.2047	26.6001
450028	1.6124	0.9193	26.8250	29.1438	29.5792	28.4741
450029	1.6184	0.8501	23.2995	25.0602	26.9361	25.0112
450031	1.4011	0.9786	27.9626	29.0824	30.3542	29.1129

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
450032	1.2887	0.8552	27.0748	21.5084	25.5785	24.5163
450033	1.6328	0.9193	28.4781	29.2468	27.8680	28.5092
450034	1.5781	0.8616	24.1589	26.5313	27.6929	26.1022
450035	1.4958	0.9997	26.2838	28.0668	28.8049	27.6978
450037	1.6448	0.8872	24.2684	26.6207	28.3403	26.4155
450039	1.4616	0.9681	24.7347	26.7503	28.2081	26.5799
450040	1.8081	0.8642	24.9590	25.4734	26.8412	25.7399
450042	1.7918	0.8594	24.1181	26.6382	26.5429	25.7899
450044	1.7622	0.9786	29.4308	31.0381	29.4293	29.9718
450046	1.6190	0.8456	23.4907	24.8947	25.5903	24.6759
450047	0.8457	0.9193	19.8221	21.8824	23.8457	21.9037
450050	0.8661	*	23.3044	*	*	23.3044
450051	1.9254	0.9786	28.0411	28.8829	29.9038	28.9708
450052	0.9462	0.8198	19.7774	22.6448	23.0007	21.3928
450053	0.9303	*	21.9082	*	*	21.9082
450054	1.7997	0.8304	24.2782	27.5399	26.5599	26.0525
450055	1.0493	0.8198	22.1979	22.9245	23.6382	22.9302
450056	1.7631	0.9502	27.0530	28.3092	31.4971	28.7483
450058	1.5935	0.8896	25.9653	26.6926	26.9918	26.5548
450059	1.3109	0.9502	26.6535	26.8325	27.3856	26.9630
450064	1.4732	0.9681	23.8748	26.8355	28.2786	26.2939
450068	2.1593	0.9997	27.9633	29.5876	30.5001	29.3709
450072	1.2067	0.9997	24.0166	25.8619	27.1081	25.6939
450073	0.8859	0.8198	21.7337	26.9446	26.1567	24.8300
450076	1.6741	*	*	*	*	*
450078	0.9153	0.8198	15.8968	21.4716	20.0758	18.9517
450079	1.6341	0.9786	28.1096	30.2420	30.5968	29.6101
450080	1.2456	0.8872	22.9836	27.9191	26.2439	25.6047
450082	1.1501	0.8198	22.0442	23.9025	24.2018	23.3904
450083	1.8310	0.9182	25.8214	27.4955	32.6462	28.5964
450085	1.0612	0.8198	22.0840	24.3637	25.6440	24.0616
450087	1.4142	0.9681	29.1587	30.0095	31.2668	30.1454
450090	1.2348	0.8848	19.4245	21.3837	21.8839	20.8851
450092	1.1900	0.8198	23.2071	24.9917	26.2781	24.8586
450094	***	*	25.2434	*	*	25.2434
450096	***	*	24.1618	26.5103	28.1902	26.1065
450097	1.4813	0.9997	26.4965	29.0142	29.8734	28.4576
450098	0.9764	*	22.6626	*	*	22.6626
450099	1.2849	0.9152	26.6796	31.3495	31.7829	29.8766
450101	1.6850	0.8594	23.6905	25.4409	26.7457	25.2723
450102	1.7581	0.9182	24.5503	25.6318	26.4161	25.5272
450104	1.1910	0.8896	23.8469	24.6169	28.8063	25.7441
450107	1.5650	0.9141	25.9326	27.6064	27.8177	27.1285
450108	1.2022	0.8896	19.4935	21.6557	19.3245	20.1295
450113	***	*	54.6663	*	*	54.6663
450119	1.3059	0.9136	25.7008	27.8027	31.1026	28.0194
450121	***	*	25.7051	29.1296	27.7472	27.5367
450123	1.2261	0.8616	21.2154	24.9674	26.2469	24.0865
450124	1.8807	0.9502	27.4198	28.2571	30.9140	28.8720
450126	1.3811	0.9997	28.3032	29.3768	30.5540	29.4686
450128	1.2606	0.9136	23.3633	25.1122	26.3296	24.9399
450130	1.1622	0.8896	21.5226	24.3295	24.3842	23.4132
450131	***	*	23.7098	25.9494	*	24.6979
450132	1.5736	0.9954	28.6954	30.1620	31.9981	30.2616
450133	1.5644	0.9712	26.8344	28.4647	30.0648	28.4860
450135	1.7036	0.9681	26.0755	27.8983	30.1385	28.0791
450137	1.7309	0.9681	30.4254	31.4950	31.9644	31.3195
450143	0.9924	0.9502	21.8705	23.4592	23.6834	23.0250
450144	1.0795	0.8757	21.3289	26.2881	29.2987	25.2285
450147	1.5055	0.8198	23.9771	24.3562	24.7221	24.3818
450148	1.2593	0.9681	25.3498	27.0894	29.6777	27.2884
450151	***	*	22.2915	23.9558	26.2011	24.2451
450152	1.2222	0.8304	22.7463	23.3428	23.1056	23.0676
450154	1.3964	0.8198	21.2021	21.7237	22.9357	21.9527
450155	1.1128	0.8198	18.0588	21.7604	24.8052	21.2762
450162	1.3166	0.8642	30.9903	33.3285	32.9317	32.4581
450163	1.0669	0.8252	23.1400	24.1267	24.7857	24.0374

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
450165	1.1663	0.8896	24.3242	28.6490	29.1839	27.3457
450176	1.3545	0.9136	20.9297	23.1284	24.4338	22.7670
450177	1.1706	0.8198	21.3322	23.7624	24.4064	23.1608
450178	0.9841	0.9523	24.7301	27.8405	27.1184	26.5678
450184	1.5607	0.9997	26.7821	28.5399	29.5940	28.3021
450187	1.1820	0.9997	25.6787	28.3243	27.7374	27.2569
450188	0.9375	0.8198	20.4070	23.0595	23.2280	22.2802
450191	1.1684	0.9502	26.0298	26.5863	28.3937	27.0037
450192	1.1362	0.8469	22.5880	24.1186	26.4722	24.4203
450193	2.0940	0.9997	32.2964	34.4545	36.4793	34.4413
450194	1.3690	0.8411	24.8972	22.9605	24.3531	24.0550
450196	1.4362	0.9681	24.7557	24.0161	23.4577	24.1010
450200	1.5854	0.8198	23.5344	23.5012	25.6413	24.1114
450201	0.9698	0.8198	20.9810	23.2510	23.2800	22.5466
450203	1.1783	0.9637	24.1675	26.5237	27.8795	26.2148
450209	1.9545	0.9152	26.0958	27.5668	30.6146	28.0394
450210	0.9541	0.8349	19.9832	21.8722	22.5736	21.5263
450211	1.3225	0.8872	23.8230	28.4581	28.3770	26.9047
450213	1.9145	0.8896	23.9676	25.9169	26.8566	25.6079
450214	1.2450	0.9997	25.9598	27.4357	27.9913	27.1357
450219	0.9693	0.8198	21.7934	21.9207	23.9636	22.5469
450221	1.1310	0.8198	20.3186	19.3793	21.3721	20.3738
450222	1.6699	0.9997	27.4426	30.0314	30.3801	29.2831
450224	1.3681	0.9182	24.1956	26.8302	28.4382	26.4258
450229	1.6509	0.8241	21.4459	24.4450	25.1370	23.6500
450231	1.6694	0.9152	25.2852	27.1674	26.9783	26.4822
450234	1.0257	0.8198	18.4451	20.6889	20.4659	19.9283
450235	1.0130	0.8198	21.5138	23.5212	21.8967	22.3104
450236	1.0587	0.8587	22.0788	23.5426	22.9622	22.8816
450237	1.6285	0.8896	24.8901	25.7939	30.5885	26.8889
450239	0.9810	0.8304	21.1945	21.2586	19.1359	20.4359
450241	1.0079	0.8198	18.7958	20.8732	21.3641	20.3133
450243	0.9797	0.8198	15.4636	15.4510	17.2966	16.0870
450253	0.9237	0.9997	20.6124	24.2435	24.1056	23.0166
450270	1.1787	0.8469	14.4325	15.2190	19.8180	16.4159
450271	1.2139	0.9637	21.7719	22.7035	24.1269	22.9111
450272	1.2109	0.9502	25.7392	26.2576	27.0521	26.3732
450276	***	*	16.6319	*	*	16.6319
450280	1.4744	0.9786	28.7233	29.9730	31.6575	30.1311
450283	1.0394	0.9681	20.9679	22.7938	24.1754	22.6250
450289	1.4188	0.9997	28.5665	32.2645	32.6533	31.2446
450292	1.2700	0.9786	25.0411	26.3242	26.8110	26.0607
450293	0.8636	0.8198	21.3135	23.6413	24.0827	22.9699
450296	1.1003	0.9997	27.9690	30.4324	31.5596	30.0340
450299	1.6637	0.9172	26.4933	27.5797	28.4171	27.4989
450306	0.9541	0.8241	15.9855	21.4558	22.9486	19.7058
450315	1.8055	0.9786	*	37.1721	*	37.1721
450324	1.5710	0.9681	24.9128	25.1633	26.6093	25.5442
450330	1.2146	0.9997	25.5820	26.0771	27.1100	26.2641
450340	1.3762	0.8659	24.0637	25.0344	25.6791	24.9276
450346	1.4301	0.8616	22.2468	23.6072	23.8720	23.2813
450347	1.1980	0.9997	27.2203	28.7667	30.7825	28.9056
450348	1.0403	0.8198	18.7675	21.6787	21.0484	20.5437
450351	1.2634	0.9637	25.6859	26.5388	29.2560	27.1710
450352	1.1039	0.9786	24.8012	26.2281	27.2983	26.1099
450353	***	*	24.4454	27.0248	27.9576	26.5065
450358	1.9690	0.9997	30.4280	31.4926	32.5922	31.5508
450362	***	*	25.4372	*	*	25.4372
450369	1.0321	0.8198	18.4848	19.9148	22.8525	20.4182
450370	1.1955	0.8433	20.0832	25.5834	26.3235	23.8014
450372	1.3699	0.9786	28.3359	30.8886	29.5022	29.5636
450373	0.8644	0.8198	22.2213	24.8286	27.0726	24.8206
450374	0.9938	*	23.2283	*	*	23.2283
450378	1.4691	0.9997	30.7684	30.3883	32.2278	31.1287
450379	1.3331	0.9786	30.6071	33.7521	35.3807	33.1822
450381	0.9328	*	22.0482	*	*	22.0482
450388	1.6610	0.8896	25.8674	27.4328	27.8155	27.0481

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Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
450389	1.1531	0.9681	23.8764	25.6732	26.9638	25.5406
450393	0.5363	0.9681	18.4551	21.9347	*	19.7864
450395	1.0563	0.9997	24.8656	27.5189	26.7743	26.5003
450399	0.8946	0.8198	18.2074	20.3528	22.1731	20.1552
450400	1.0785	0.8198	23.1739	23.6358	26.2871	24.2928
450403	1.3135	0.9786	29.3063	29.0359	29.8643	29.4107
450411	1.0100	0.8198	19.6086	20.9372	21.5746	20.7294
450417	0.8612	*	20.0351	*	*	20.0351
450418	***	*	26.8434	28.4362	*	27.5264
450419	1.2724	0.9681	31.0405	31.9966	34.2427	32.4903
450422	1.2225	0.9786	30.6659	34.4331	31.3454	32.1021
450424	1.3422	0.9997	28.3149	28.2463	30.7228	29.0903
450431	1.5882	0.9502	25.2477	26.3263	27.3926	26.3387
450438	1.1315	0.9997	21.9350	27.8659	26.5223	25.2196
450446	0.6348	0.9997	14.3132	17.0691	17.2871	16.0880
450447	1.2608	0.9681	23.5047	25.4200	26.5238	25.1015
450451	1.1286	0.8734	23.3043	24.6201	26.5477	24.8404
450460	0.9645	0.8251	20.5811	22.4227	24.9870	22.7352
450462	1.7180	0.9786	27.8923	29.6069	30.1466	29.2312
450465	1.1121	0.9997	22.4183	26.2759	27.0835	25.3182
450469	1.4937	0.9681	28.7890	26.3262	26.3445	27.1807
450475	1.0922	0.8872	23.5596	23.0942	24.5176	23.7054
450484	1.3677	0.8872	25.3527	26.7242	28.3913	26.8380
450488	1.1516	0.8872	23.9144	22.3981	23.7985	23.3820
450489	0.9930	0.8198	21.4771	23.4806	25.2680	23.4878
450497	1.0142	0.8573	18.8344	22.0918	23.1860	21.3700
450498	0.9453	0.8198	17.7822	18.6563	20.2475	18.8938
450508	1.5958	0.8872	23.9572	28.4471	27.2850	26.5800
450514	***	*	22.6552	26.3704	27.3043	25.5172
450518	1.4357	0.8616	24.1194	28.1755	29.1322	27.1788
450530	1.2777	0.9997	28.7451	29.1349	29.9720	29.2964
450537	1.4003	0.9786	27.5856	27.7757	28.7448	28.0481
450539	1.1985	0.8265	21.0442	23.1829	24.2151	22.7465
450547	0.9648	0.8393	21.6542	23.7820	34.3349	25.8923
450558	1.8257	0.8241	26.1551	26.9407	28.0655	27.0633
450563	1.5242	0.9681	28.7289	30.8332	32.0507	30.6111
450565	1.2522	0.8684	23.8846	26.7942	28.1741	26.2662
450571	1.6028	0.8659	22.7703	25.2108	27.4605	25.0812
450573	1.1240	0.8324	20.1479	22.0797	22.1492	21.5110
450578	0.9614	0.8198	20.2696	22.5167	25.0498	22.6273
450580	1.0846	0.8198	21.1574	22.3886	23.9004	22.4744
450584	1.1124	0.8198	21.0808	20.5257	22.5204	21.3633
450586	0.9374	0.8198	16.1003	18.9107	20.6699	18.6573
450587	1.2013	0.8198	20.4512	23.1202	25.0174	22.8390
450591	1.2595	0.9997	23.9992	25.7031	27.1744	25.6141
450596	1.2190	0.9637	25.3317	27.4011	29.8462	27.4275
450597	0.9772	0.8198	23.1711	24.7853	24.2586	24.0731
450604	1.3501	0.8198	20.9514	24.4743	25.9133	23.8497
450605	0.9405	0.8456	22.2205	20.9276	23.9332	22.2910
450610	1.5912	0.9997	26.8710	27.7317	28.3713	27.6825
450615	0.9878	0.8198	20.3028	21.8442	24.1902	22.0858
450617	1.5092	0.9997	26.5026	28.0225	28.8323	27.8240
450620	1.0024	0.8198	17.7138	18.6183	20.3723	18.9192
450623	1.1755	*	28.3552	*	*	28.3552
450626	***	*	26.8374	*	*	26.8374
450630	1.5459	0.9997	29.6796	29.1462	29.8431	29.5562
450634	1.7069	0.9786	28.1705	28.7312	30.3274	29.0806
450638	1.6735	0.9997	29.6184	30.6572	32.4911	30.8650
450639	1.4449	0.9681	29.2669	30.4019	32.6255	30.7775
450641	1.0336	0.8573	17.5845	19.4389	20.2483	19.0723
450643	1.3305	0.8501	21.1205	22.7355	24.4999	22.7584
450644	1.5887	0.9997	29.0186	29.7918	30.7815	29.8996
450646	1.4232	0.9141	23.8908	25.6313	26.8060	25.4375
450647	1.8334	0.9786	30.7334	30.6924	32.4236	31.2797
450651	1.4793	0.9786	32.4822	30.4484	31.9261	31.6022
450653	1.1659	0.8198	23.2603	25.2144	26.1756	24.8558
450654	0.9024	0.8198	19.9992	21.5002	22.5447	21.4234

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
450656	1.4165	0.8872	23.8280	25.5050	28.1493	25.7182
450658	0.9853	0.8198	20.5398	22.2293	24.7856	22.5185
450659	1.4621	0.9997	30.1727	31.5024	34.2380	31.8910
450661	1.1887	0.9954	23.2989	30.2610	30.0751	27.8684
450662	1.5730	0.9193	28.0913	29.0535	29.0532	28.7293
450665	***	*	18.6054	*	*	18.6054
450668	1.5287	0.9141	26.2375	28.8635	30.6114	28.5378
450669	1.2128	0.9786	27.4507	27.9796	30.2374	28.6058
450670	1.4050	0.9997	25.1575	25.9638	26.4266	25.8773
450672	1.8204	0.9681	27.6359	30.1191	31.8420	29.9422
450674	1.0697	0.9997	28.4416	28.7101	29.8971	29.0121
450675	1.3861	0.9681	28.7765	28.9005	30.9562	29.5682
450677	1.2694	0.9681	27.3728	25.9555	27.2760	26.8379
450678	1.5046	0.9786	30.1500	31.1563	33.3386	31.5036
450683	1.1583	0.9786	24.6609	27.4925	21.1737	24.2967
450684	1.2913	0.9997	27.6789	29.3025	30.2139	29.1278
450686	1.5950	0.8642	23.2367	24.2331	25.8530	24.4614
450688	1.1957	0.9786	27.9057	26.8599	26.9897	27.2212
450690	1.3100	0.9182	28.2531	26.5528	26.1743	27.0377
450694	1.1609	0.8198	23.5789	23.9961	24.0031	23.8670
450697	1.4201	0.8896	23.7155	24.8667	26.4132	25.0106
450698	0.8999	0.8325	18.6494	20.0955	21.5742	20.0867
450702	1.7113	0.8872	25.6147	26.8384	26.3696	26.2787
450709	1.3573	0.9997	25.4855	26.8146	27.1077	26.4651
450711	1.4817	0.9136	28.0104	26.7472	27.5622	27.4437
450713	1.5782	0.9502	27.2801	28.8285	29.4980	28.5539
450715	1.2406	0.9786	28.0365	17.3991	17.0235	19.5811
450716	1.3502	0.9997	30.8440	32.3960	33.7096	32.3143
450718	1.3791	0.9502	27.3408	27.3215	28.1560	27.6253
450723	1.4671	0.9786	28.0812	28.5103	30.1704	28.9694
450730	1.3698	0.9786	29.9430	31.3324	32.7293	31.3334
450733	***	*	26.4977	*	*	26.4977
450742	1.1911	0.9786	26.1189	27.2023	30.0583	27.8913
450743	1.4606	0.9786	27.3213	28.3362	28.4736	28.0743
450746	0.9233	0.8198	12.4748	20.6343	22.7873	18.2509
450747	1.2814	0.9182	22.2870	23.8314	25.8175	23.8627
450749	0.9915	0.8198	17.8227	20.0487	22.1562	19.9062
450751	***	*	19.3267	18.7456	21.4223	19.9014
450754	0.9275	0.8198	20.8968	22.1819	24.7797	22.6402
450755	0.9393	0.8474	18.0092	19.8988	22.2006	20.0136
450758	***	*	25.6547	28.7342	28.2803	27.5631
450760	1.0564	0.9141	24.6349	24.7489	25.1637	24.8390
450761	0.8818	*	15.7483	*	*	15.7483
450763	1.0706	*	22.4905	*	*	22.4905
450766	1.9348	0.9786	30.0441	30.8004	30.2341	30.3517
450770	1.2421	0.9502	20.3656	24.1647	24.3244	23.0091
450771	1.6716	0.9786	31.3924	30.7105	32.0500	31.3870
450774	1.6363	0.9997	24.9683	27.2080	25.7436	25.9776
450775	1.2932	0.9997	24.4006	28.1428	29.8230	27.3216
450779	1.2689	0.9681	26.9908	29.9674	31.8403	29.6444
450780	2.0442	0.8896	23.9516	26.7611	27.0084	25.8985
450788	1.5555	0.8456	25.4172	26.2840	28.3759	26.7019
450795	1.1878	0.9997	23.7510	25.2007	32.9803	27.3787
450796	1.7336	0.9152	27.9734	36.4073	37.6274	33.9632
450797	1.9643	0.9997	20.5379	24.8950	24.8598	23.1191
450801	1.5000	0.8198	23.0373	24.6328	23.6072	23.7609
450803	1.1830	0.9997	30.6093	28.9235	29.0106	29.5055
450804	1.9178	0.9997	26.0981	27.8775	29.1282	27.7201
450808	1.3367	0.9502	23.8067	21.9793	23.0312	22.9181
450809	1.5667	0.9502	26.3659	26.4223	27.3080	26.7166
450811	1.8166	0.9136	25.8491	27.2584	31.2208	27.9853
450813	1.1710	0.8896	25.5949	20.1710	22.9289	22.7727
450820	1.3250	0.9997	30.5288	31.4666	33.9030	32.1410
450822	1.2857	0.9786	31.1430	32.2968	32.2145	31.9067
450824	2.4889	0.9502	26.7803	31.2375	33.3653	30.5418
450825	1.3904	0.9136	20.2959	20.6457	25.1521	21.9878
450827	1.3878	0.8203	20.9704	23.7554	24.1984	23.0409

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
450828	1.3241	0.8198	22.3667	24.4740	24.8236	24.1300
450829	***	*	19.5014	20.6016	19.5842	19.9030
450830	1.0196	0.9523	28.1617	28.5902	27.8005	28.1885
450831	1.4011	0.9997	22.7885	23.3880	23.9467	23.3309
450832	1.2704	0.9997	26.6628	26.5229	27.3290	26.8494
450833	1.3222	0.9786	26.0044	27.0133	27.9649	27.0364
450834	1.5971	0.9172	21.2204	20.9607	27.4844	22.7772
450838	1.1492	0.8324	15.8026	19.5754	18.9620	18.1919
450839	0.9901	0.8552	22.9711	25.8222	27.2199	25.2487
450840	1.2906	0.9786	31.1914	30.1743	32.2538	31.2218
450841	1.9165	0.9193	18.9468	20.9410	20.9424	20.3779
450844	1.3117	0.9997	28.7296	30.7887	33.7978	31.3327
450845	1.8432	0.9141	27.7461	29.4933	29.9265	29.0937
450847	1.2710	0.9997	27.6854	28.5548	29.7356	28.6780
450848	1.3004	0.9997	27.8100	29.5355	30.5546	29.3303
450850	1.1195	0.9712	22.1335	21.9266	31.9606	24.7549
450851	2.5542	0.9786	30.1213	32.6950	35.1102	32.6767
450852	***	*	30.0191	*	*	30.0191
450853	1.9480	0.9786	*	36.1169	37.1043	36.6729
450854	***	*	*	27.1868	*	27.1868
450855	1.5587	0.9193	*	30.8855	32.6916	31.8350
450856	1.9053	0.8896	*	39.0865	37.7362	38.3791
450857	***	*	*	30.4632	*	30.4632
450860	1.9631	0.9997	*	24.0171	29.1075	26.9551
450861	***	*	*	34.9290	*	34.9290
450862	1.4560	0.9997	*	31.2224	31.8095	31.4630
450863	***	*	*	24.8825	*	24.8825
450864	2.0615	0.9182	*	23.3765	24.5049	24.0210
450865	1.0642	0.9502	*	29.1763	29.9559	29.5867
450866	***	*	*	15.2959	*	15.2959
450867	1.1905	0.9502	*	28.2289	29.5879	28.9055
450868	1.8308	0.9954	*	27.9579	25.3486	26.8246
450869	2.0516	0.9136	*	22.6253	26.1616	24.9911
450870	***	*	*	37.4364	*	37.4364
450871	1.8016	0.9502	*	*	28.9150	28.9150
450872	1.3873	0.9681	*	*	27.2833	27.2833
450873	***	*	*	*	14.8821	14.8821
450874	1.5449	0.9786	*	*	34.6083	34.6083
450875	1.6419	0.9152	*	*	23.2763	23.2763
450876	2.0787	0.8642	*	*	28.4343	28.4343
450877	1.5503	0.9141	*	*	26.1867	26.1867
450878	2.5573	0.8896	*	*	31.6750	31.6750
450879	1.2943	0.8501	*	*	35.5672	35.5672
450880	1.6570	0.9681	*	*	35.9572	35.9572
450881	***	*	*	*	24.5464	24.5464
450882	***	*	*	*	26.6910	26.6910
450883	2.5235	0.9786	*	*	35.2646	35.2646
450884	0.9920	0.8921	*	*	27.8213	27.8213
450885	1.4958	0.9786	*	*	34.1148	34.1148
450886	1.9602	0.9661	*	*	*	*
450888	1.4699	0.9661	*	*	*	*
450889	1.5257	0.9786	*	*	*	*
450890	2.0976	0.9786	*	*	*	*
450891	1.3643	0.9786	*	*	*	*
450893	1.2413	0.9786	*	*	*	*
450894	1.6453	0.9786	*	*	*	*
450895	***	*	*	*	18.4142	18.4142
460001	1.8844	0.9481	27.0757	28.7150	30.0040	28.5953
460003	1.5188	0.9474	26.1372	31.4135	32.3427	29.8772
460004	1.7340	0.9474	26.4498	28.2040	29.6342	28.1012
460005	1.4367	0.9474	23.5633	25.0239	26.0731	24.8800
460006	1.3712	0.9474	25.4787	27.1392	28.3678	27.0132
460007	1.3738	0.9536	25.6686	27.1308	28.0035	26.9931
460008	1.4051	0.9474	26.5672	29.5907	31.5485	29.1771
460009	1.9306	0.9474	26.2833	27.2885	28.3836	27.3958
460010	2.0966	0.9474	27.4648	29.0063	30.4606	29.0099
460011	1.3219	0.9380	23.4023	24.4402	24.9677	24.2736

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
460013	1.4123	0.9481	25.2448	27.7381	29.2731	27.3708
460014	1.1347	0.9474	24.1412	28.2647	29.5963	27.3277
460015	1.3642	0.9215	25.6576	27.2506	29.1318	27.3614
460017	1.3017	0.8598	23.0388	24.3030	26.1589	24.4636
460018	0.9383	0.8215	20.3756	22.0517	22.8028	21.8351
460019	1.1628	0.8215	19.9901	24.3756	23.2202	22.4677
460020	1.0138	*	19.5669	18.5159	*	19.0929
460021	1.6953	1.1223	26.3420	28.0291	29.5761	28.1943
460023	1.1931	0.9481	25.3094	26.9512	28.5884	26.9777
460026	1.0465	0.9380	24.1547	26.9295	27.9487	26.3213
460030	1.1801	0.8215	23.4679	23.5942	24.4218	23.8301
460033	0.9138	0.8215	22.0249	25.3422	26.6606	24.7048
460035	0.9489	0.8215	17.5723	20.6322	21.9115	20.1175
460036	1.4454	*	27.2866	*	*	27.2866
460037	0.8447	*	21.1035	*	*	21.1035
460039	1.0867	0.9215	28.5657	29.5651	30.4912	29.5982
460041	1.3585	0.9474	25.2744	26.4640	26.3807	26.0600
460042	1.3922	0.9474	22.9949	24.9454	26.8389	24.8871
460043	1.2796	0.9481	28.2089	28.2008	28.6668	28.3615
460044	1.3080	0.9474	26.6795	27.4928	28.7023	27.6434
460047	1.6733	0.9474	25.7920	28.2336	29.9990	27.9779
460049	1.9973	0.9474	24.5165	26.6702	28.4884	26.6038
460051	1.2366	0.9474	25.5881	27.0160	27.8841	26.8633
460052	1.6315	0.9481	25.3163	26.1629	27.1995	26.2810
460054	1.5951	0.9215	25.8668	24.9926	25.7870	25.5264
470001	1.2942	1.0533	27.7329	28.3017	29.7540	28.6009
470003	1.9037	1.0388	26.4919	28.1137	30.1973	28.2590
470005	1.3059	1.0388	29.8255	30.7872	33.1981	31.2960
470006	1.2524	*	26.9651	*	*	26.9651
470010	***	*	26.1273	*	*	26.1273
470011	1.1763	1.0388	28.3911	28.1330	29.6269	28.7242
470012	1.1997	1.0388	24.3425	26.0225	27.0751	25.8314
470018	1.1137	*	28.3419	*	*	28.3419
470024	1.2029	1.0388	25.2427	27.0394	26.6351	26.3235
490001	1.0895	0.8074	21.9953	23.2174	24.0368	23.1150
490002	1.0523	0.8074	19.5613	20.8609	21.7092	20.6693
490003	***	*	27.3456	*	*	27.3456
490004	1.3086	0.9161	25.4597	27.1676	27.5890	26.7640
490005	1.6441	1.0676	28.5744	29.8215	30.5349	29.6413
490007	2.1955	0.8777	26.2481	27.6572	29.3098	27.7576
490009	2.0115	0.9161	29.0740	30.4722	28.4642	29.2905
490011	1.5273	0.8777	24.5687	26.4766	27.4764	26.2051
490012	1.0133	0.8074	19.2276	21.0605	22.9922	21.0354
490013	1.3388	0.8606	22.4771	24.7521	25.5560	24.2699
490017	1.5006	0.8777	24.6845	25.8216	27.5902	26.0271
490018	1.3285	0.9161	24.5196	26.2510	27.2644	26.0551
490019	1.1901	1.0676	25.9761	25.9885	25.8264	25.9276
490020	1.2418	0.9233	24.8001	27.3142	29.3468	27.1254
490021	1.4767	0.8606	24.6440	25.7938	27.0641	25.8484
490022	1.4239	1.0676	28.0749	32.2676	30.1203	30.1142
490023	1.3029	1.0676	29.7774	30.3416	30.9920	30.3866
490024	1.7769	0.8889	23.0982	26.1125	27.9689	25.6684
490027	1.0539	0.8074	18.9409	24.0288	23.0017	21.9123
490031	***	*	22.0579	*	*	22.0579
490032	1.9605	0.9233	25.1381	25.2654	28.5897	26.3877
490033	1.1087	1.0676	30.0909	31.2922	31.8282	31.1180
490037	1.2021	0.8074	21.3035	24.7711	25.2859	23.7337
490038	1.2579	0.8074	22.3976	21.8509	22.6504	22.2973
490040	1.4791	1.0676	32.8738	32.6564	34.1841	33.2338
490041	1.5154	0.8777	24.5738	26.0897	27.1613	25.9093
490042	1.2791	0.8746	21.8749	24.4650	25.7333	24.0571
490043	1.2495	1.0676	30.8871	33.7096	35.8872	33.5694
490044	1.4481	0.8777	20.8352	23.3527	23.3793	22.5144
490045	1.2631	1.0676	28.8279	32.0937	30.3772	30.3677
490046	1.5195	0.8777	25.6328	26.6517	27.9604	26.7676
490047	1.2301	*	22.5423	*	*	22.5423
490048	1.4179	0.8889	25.0097	26.2828	27.0620	26.1566

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
490050	1.4893	1.0676	30.5037	31.3885	32.2993	31.4066
490052	1.6975	0.8777	22.8889	23.5973	25.0046	23.8195
490053	1.2133	0.8074	21.8432	23.3315	23.8004	22.9792
490057	1.6174	0.8777	26.1128	26.6898	27.4918	26.7709
490059	1.6486	0.9233	28.7276	27.3611	30.8669	28.9526
490060	1.0549	0.8074	22.4201	23.6113	24.3192	23.4567
490063	1.8511	1.0676	30.3632	31.3619	31.6069	31.1276
490066	1.3599	0.8777	24.7146	27.8250	29.5917	27.4514
490067	1.2606	0.9233	22.9188	24.9021	25.9497	24.5486
490069	1.6019	0.9233	26.8791	27.3181	29.1527	27.7952
490071	1.3192	0.9233	28.4381	29.7186	31.7061	29.9452
490073	2.0908	1.0676	31.7743	33.1829	34.5774	33.0517
490075	1.4337	0.8297	23.8191	25.2022	25.7323	24.9373
490077	1.4152	0.9161	26.0800	26.6806	28.1506	26.9963
490079	1.2496	0.9078	23.4728	25.3103	25.2340	24.6377
490084	1.1764	0.8261	24.5965	24.9007	25.7657	25.0948
490088	1.0999	0.8606	22.4186	24.1471	25.0619	23.8698
490089	1.1022	0.8889	22.6461	24.9438	25.9902	24.5386
490090	1.1083	0.8074	22.2907	25.1157	25.5418	24.2403
490092	1.0916	0.9233	23.8655	23.3439	25.7405	24.2726
490093	1.4715	0.8777	25.0751	25.6531	26.7886	25.8819
490094	0.9845	0.9233	26.5726	28.2165	28.9155	27.8970
490097	1.0621	0.9233	23.8005	26.5322	27.1470	25.8282
490098	1.2546	0.8074	21.7231	23.2782	25.1625	23.3960
490101	1.4004	1.0676	30.4285	31.2377	32.3695	31.3631
490104	0.7733	0.9233	17.3295	*	17.0548	17.1728
490105	0.7209	0.8074	24.7922	25.5329	26.3827	25.5156
490106	0.9111	0.9161	23.0199	23.8334	25.7352	23.7423
490107	1.3334	1.0676	29.7000	32.2672	33.5430	31.8922
490108	1.0741	0.8606	22.4345	22.9076	23.3204	22.8878
490109	0.8787	0.9233	21.9877	22.7854	24.2296	22.9554
490110	1.3515	0.8314	22.5974	24.2887	24.9861	24.0085
490111	1.1948	0.8074	22.0199	22.1476	22.7336	22.3108
490112	1.7163	0.9233	26.6453	27.1932	29.0816	26.6672
490113	1.3106	1.0676	29.5698	31.8177	32.4547	31.3270
490114	1.1470	0.8074	20.9116	22.5255	22.1387	21.8658
490115	1.1538	0.8074	21.4666	22.4058	23.5718	22.4670
490116	1.1780	0.8129	22.9017	24.2258	24.3853	23.8567
490117	1.1514	0.8074	18.0277	19.6398	18.1138	18.6020
490118	1.6635	0.9233	27.4050	27.6749	29.0569	28.0591
490119	1.3033	0.8777	25.2549	26.5756	27.8866	26.6080
490120	1.3991	0.8777	24.4434	25.8795	25.9610	25.4137
490122	1.5535	1.0676	31.0449	32.0743	33.3719	32.1673
490123	1.1537	0.8074	23.9233	24.3490	24.2254	24.1638
490126	1.1649	0.8074	22.2859	23.6690	24.0908	23.3598
490127	1.1300	0.8074	20.4289	21.3735	23.5161	21.6359
490130	1.2701	0.8777	22.8512	23.9982	25.3352	24.0816
490133	***	*	26.5684	*	*	26.5684
490134	0.7623	0.8074	*	*	33.2405	33.2405
490135	0.7016	0.8889	*	*	25.9998	25.9998
490136	1.4665	0.9233	*	*	*	*
490137	1.2895	0.8777	*	*	*	*
500001	1.6372	1.1363	29.3707	31.1605	33.0901	31.2057
500002	1.4288	1.0559	25.3347	27.6400	29.1448	27.3388
500003	1.3314	1.1209	29.6341	30.6939	32.1262	30.7330
500005	1.7738	1.1363	32.0972	33.5117	35.0997	33.5662
500007	1.3436	1.1209	28.0476	29.2869	30.5263	29.3452
500008	1.8910	1.1363	31.8837	32.6052	33.5666	32.7102
500011	1.3636	1.1363	30.6508	31.4514	32.6223	31.5869
500012	1.7458	1.0559	30.6856	30.0509	33.8101	31.3853
500014	1.6966	1.1363	33.7536	36.1380	36.5833	35.5228
500015	1.4680	1.1363	32.0592	34.5877	37.5724	34.7448
500016	1.6470	1.1209	31.4222	31.4905	32.9177	31.9513
500019	1.2785	1.0690	28.6669	30.5594	31.6242	30.2721
500021	1.2943	1.1209	30.1690	30.7927	32.4702	31.1942
500024	1.7699	1.1420	30.7917	32.6171	36.1647	33.1801
500025	1.8291	1.1363	34.7252	37.7952	40.6369	37.5370

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
500026	1.3958	1.1363	33.2937	32.8369	34.5881	33.5880
500027	1.5127	1.1363	34.2175	34.6164	39.2906	36.0226
500030	1.6952	1.1258	32.7446	32.4426	34.9174	33.4028
500031	1.2765	1.1288	31.2186	32.8833	33.2391	32.4932
500033	1.3169	1.0559	29.4627	30.6292	31.8891	30.6527
500036	1.3457	1.0559	27.0072	28.7096	30.5938	28.8242
500037	1.0254	1.0559	26.9969	28.1056	31.2654	28.7446
500039	1.4957	1.1209	29.8808	32.2245	33.5606	31.9348
500041	1.4361	1.1227	26.7829	30.3627	34.2017	30.2993
500044	1.9624	1.0559	30.3164	29.0214	31.0936	30.1182
500049	1.3501	1.0559	27.1819	27.7170	29.8189	28.3097
500050	1.4998	1.1227	29.9791	32.6751	33.7713	32.1383
500051	1.7960	1.1363	31.9406	32.5764	34.7610	33.0994
500052	1.4523	1.1363	*	*	*	*
500053	1.2886	1.0559	28.4130	28.2901	30.2811	28.9866
500054	1.9948	1.0559	30.8067	31.6595	32.5105	31.6694
500058	1.6540	1.0559	30.4699	30.7487	30.7034	30.6484
500060	1.3720	1.1363	34.1523	37.4869	38.7682	36.8223
500064	1.7342	1.1363	31.5371	31.6112	32.3581	31.8431
500072	1.2307	1.0821	33.4863	31.2000	32.5269	32.3949
500077	1.4558	1.0559	29.4199	31.6153	33.2223	31.3945
500079	1.3764	1.1209	29.6623	31.3280	32.5809	31.1946
500084	1.3889	1.1363	29.3484	30.2411	32.7883	30.8053
500088	1.3945	1.1363	33.4302	35.3770	36.7953	35.2133
500108	1.6416	1.1209	29.4244	31.8483	34.3872	31.9459
500119	1.3904	1.0559	30.9999	29.7028	31.2233	30.6358
500122	1.3566	*	30.1396	*	*	30.1396
500124	1.4292	1.1363	31.5438	32.3505	34.4790	32.8210
500129	1.5749	1.1209	30.7536	32.1102	34.4447	32.4986
500134	0.4899	1.1363	26.8607	27.2428	28.1374	27.5278
500138	0.8272	*	*	*	*	*
500139	1.5206	1.1420	31.6591	33.9739	34.6412	33.4188
500141	1.3171	1.1363	30.5456	31.3308	33.7532	31.9223
500143	0.4729	1.1420	22.1419	23.6766	25.3099	23.6848
500147	0.8772	*	24.5744	*	*	24.5744
500148	1.1803	1.0559	22.2161	26.4206	37.7830	30.2231
500150	1.2180	1.1227	*	*	*	*
510001	1.9238	0.8391	23.4477	25.2973	25.8693	24.9197
510002	1.2871	0.8746	25.9597	23.8921	23.7270	24.4604
510006	1.3370	0.8256	23.5727	24.9627	24.8777	24.4769
510007	1.7232	0.8879	25.2835	24.7264	27.1149	25.7084
510008	1.3059	0.9256	24.6959	26.3554	27.5241	26.2154
510012	0.9599	0.7692	18.2845	18.8984	20.8455	19.3188
510013	1.1244	0.7568	20.8782	22.7882	22.8779	22.1601
510018	1.0596	0.8394	20.5556	22.4597	23.1043	22.0364
510022	1.8444	0.8394	24.2125	26.9511	26.8328	25.9941
510023	1.2839	0.7889	20.4908	20.6435	21.0940	20.7445
510024	1.8414	0.8408	24.0444	25.5634	26.6621	25.4529
510026	0.9983	0.7568	16.6192	17.9908	19.2025	17.9223
510028	***	*	21.7135	*	*	21.7135
510029	1.3235	0.8394	22.4556	22.7104	24.0872	23.0837
510030	1.0973	0.8256	21.5583	24.3936	24.2007	23.3949
510031	1.4315	0.8394	21.7637	23.2624	24.0237	22.9923
510033	1.7281	0.8259	23.0305	22.6189	24.0796	23.2701
510038	1.0543	0.7568	17.2832	20.6565	20.9180	19.6284
510039	1.2501	0.7568	19.5468	19.8751	20.4719	19.9555
510046	1.3467	0.7733	21.2540	22.1712	22.2935	21.8981
510047	1.1486	0.8391	24.0954	27.1214	27.6859	26.2421
510048	1.1751	0.7568	17.5096	18.8576	22.7930	19.5221
510050	1.6035	0.7568	19.9766	21.0772	21.9009	20.9839
510053	1.1071	0.7568	20.8608	22.3318	21.5338	21.5798
510055	1.5346	0.8879	30.7868	28.4615	29.4111	29.5182
510058	1.3452	0.8259	22.6976	23.9015	25.3248	23.9858
510059	0.7138	0.8394	21.9551	22.1435	20.8847	21.6752
510062	1.1628	0.8394	23.3216	26.2296	26.7066	25.4037
510067	1.1068	0.7568	21.2099	25.0437	25.2130	23.8479
510068	1.1378	*	23.1011	*	*	23.1011

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
510070	1.2272	0.8394	23.2382	23.5639	23.9742	23.5991
510071	1.3165	0.7733	23.1685	23.4508	23.2954	23.3056
510072	1.1600	0.7568	20.1997	20.5146	19.4370	20.0241
510077	1.0539	0.8725	23.6584	24.5010	25.9515	24.6973
510082	1.1084	0.7568	19.1878	19.9081	20.3279	19.7905
510085	1.2934	0.8394	23.7174	26.3877	26.2617	25.5462
510086	1.1745	0.7568	17.5933	19.8735	19.2606	18.9127
510089	***	*	27.7061	*	*	27.7061
510090	1.8498	0.8879	*	*	*	*
520002	1.3394	1.0005	24.9950	27.7705	29.0501	27.3208
520004	1.3931	0.9699	25.4639	27.6530	28.9857	27.3816
520008	1.5349	1.0296	29.8353	30.7553	33.8057	31.4985
520009	1.7224	0.9684	26.1503	27.4044	28.8591	27.4837
520011	1.3035	0.9684	25.2747	26.6268	28.0224	26.6546
520013	1.4584	0.9684	26.6225	29.0018	30.1834	28.6561
520017	1.1205	0.9684	24.6677	28.4699	29.3278	27.4748
520019	1.3604	0.9684	26.7433	28.6971	29.8640	28.5157
520021	1.3020	1.0472	26.6935	28.4182	29.1129	28.1504
520027	1.3702	1.0296	27.6771	31.4284	32.4137	30.5716
520028	1.3503	1.0997	25.4164	26.7260	28.0813	26.7500
520030	1.7226	1.0005	27.0184	29.4678	30.5724	29.0613
520033	1.2658	0.9684	25.0853	28.0662	29.0236	27.5164
520034	1.2321	0.9684	23.9850	26.1094	26.8886	25.6368
520035	1.3581	0.9760	24.7767	27.3276	28.1048	26.7464
520037	1.8188	1.0005	29.7234	30.1799	32.2144	30.7303
520038	1.2391	1.0296	26.6470	29.3134	29.6339	28.5933
520040	1.2143	1.0296	27.2325	29.1262	31.2038	29.0319
520041	1.0701	1.1176	22.7595	23.5495	25.3764	23.9562
520044	1.3515	0.9760	26.0191	27.3685	28.2382	27.2573
520045	1.6629	0.9684	26.0030	27.3336	29.2556	27.5277
520048	1.5668	0.9684	25.1724	26.8080	29.1870	26.9823
520049	2.1335	0.9684	25.9256	26.9851	28.0936	26.9958
520051	1.5562	1.0296	28.4880	31.9949	31.5974	30.7556
520057	1.1727	0.9877	25.3745	27.7528	29.1158	27.4376
520059	1.3044	1.0583	28.0907	29.5801	30.4491	29.3858
520060	1.3697	*	23.8817	24.8638	*	24.3767
520062	1.2465	1.0296	28.2215	28.8510	32.8584	30.1184
520063	1.1373	1.0296	27.4100	29.0993	30.3391	28.9452
520064	1.5987	1.0296	28.6101	30.3225	31.5723	30.0470
520066	1.4379	0.9853	27.1657	29.2088	31.0644	29.1283
520068	***	*	24.8184	*	*	24.8184
520070	1.7752	0.9684	24.8935	27.6771	28.2059	26.9824
520071	1.1683	1.0296	27.6202	30.0262	30.6930	29.4715
520075	1.5645	0.9684	27.1699	29.2920	30.1582	28.8342
520076	1.2406	1.0997	26.1697	27.3335	27.4423	26.9220
520078	1.5171	1.0296	27.5989	29.9837	31.6606	29.7283
520083	1.7370	1.1176	28.8407	30.8826	32.7728	30.8985
520087	1.7712	0.9699	27.3374	28.5810	30.5659	28.8732
520088	1.4096	0.9888	26.9936	30.7450	30.6657	29.5653
520089	1.5712	1.1176	30.0448	33.8793	33.4098	32.4835
520091	1.2971	0.9684	24.6320	25.4593	27.3442	25.8210
520094	***	*	25.7567	*	*	25.7567
520095	1.2937	1.0997	26.7863	30.4216	32.0381	29.8120
520096	1.3783	0.9879	24.5758	27.8896	29.5985	27.4540
520097	1.3976	0.9684	26.3321	29.1479	29.9998	28.4877
520098	2.0355	1.1176	30.6150	32.5785	36.5776	33.3175
520100	1.2798	0.9853	26.2161	29.3243	29.9458	28.5050
520102	1.1728	1.0296	26.8234	29.1680	30.7990	28.9928
520103	1.5495	1.0296	27.9147	30.3165	32.6269	30.3612
520107	1.2792	0.9716	28.3431	28.9878	29.4178	28.9355
520109	1.0392	0.9684	23.3271	24.7228	25.0697	24.3762
520113	1.3272	0.9684	27.4135	31.4708	33.3475	30.7254
520116	1.2669	1.0296	26.9902	27.9688	30.2156	28.3945
520132	***	*	23.1941	25.0006	27.3431	25.0308
520136	1.7249	1.0296	27.7703	30.6522	32.1479	30.1365
520138	1.8879	1.0296	28.4394	30.8016	31.6581	30.2963
520139	1.2893	1.0296	26.5110	28.8870	30.4903	28.6153

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Case-mix index <sup>2</sup>	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008 <sup>1</sup>	Average hourly wage <sup>**</sup> (3 years)
520140	0.3793	*	28.4433	31.0043	31.1315	30.2285
520152	1.0907	*	24.9392	29.7308	*	27.4042
520160	1.8662	0.9684	25.7588	27.9548	29.5582	27.7551
520170	1.4782	1.0296	27.2221	30.4309	31.4710	29.7190
520173	1.0829	0.9684	28.0995	29.2429	31.0599	29.4647
520177	1.6194	1.0296	30.7317	31.4555	32.5714	31.6050
520178	1.0240	*	20.2666	*	*	20.2666
520189	1.2042	1.0472	28.4720	28.0014	29.0295	28.4999
520193	1.7002	0.9684	26.0885	27.8113	29.2007	27.7865
520194	1.7148	1.0296	24.9408	30.1668	31.4379	28.8968
520195	0.3556	1.0296	36.6973	36.3116	36.2900	36.4369
520196	1.6798	0.9684	35.1043	36.9266	31.1175	34.0254
520197	***	*	*	*	30.1917	30.1917
520198	1.4193	0.9684	*	*	28.5975	28.5975
520199	2.2776	1.0296	*	*	36.5699	36.5699
520200	0.9180	*	*	*	*	*
520201	0.6866	*	*	*	*	*
520202	1.4495	1.0005	*	*	*	*
530002	1.1272	0.9164	26.8356	28.3063	29.2069	28.1167
530006	1.1827	0.9164	24.9318	27.2421	29.2104	27.0638
530007	***	*	20.4391	*	*	20.4391
530008	1.1673	0.9164	23.8589	24.0090	26.5180	24.7926
530009	0.9202	0.9164	26.8316	24.6719	26.0490	25.8222
530010	1.3058	0.9164	25.8482	25.9852	27.4121	26.4402
530011	1.1124	0.9164	24.8245	27.8772	27.8613	26.9109
530012	1.7060	0.9271	25.2526	26.9582	28.7524	26.9862
530014	1.5520	0.9205	24.5947	26.7156	28.5469	26.6902
530015	1.1541	0.9273	27.6876	29.8310	29.8306	29.0860
530017	1.1052	0.9164	25.3362	29.8503	31.1105	28.7232
530023	***	*	21.3813	*	*	21.3813
530025	1.2402	0.9164	28.6938	24.4392	29.4346	27.4317
530032	1.0159	0.9164	25.7728	23.9004	24.6580	24.7334

<sup>1</sup> Based on salaries adjusted occupational mix, according to the calculation in section II.D.6 of the preamble to this final rule.

<sup>2</sup> The case-mix index is based on the billed DRGs in the FY 2006 MedPAR file. It is not transfer adjusted.

\* Denotes wage data not available for the provider for that year.

\*\* Based on the sum of the salaries and hours computed for Federal FYs 2006, 2007, and 2008.

\*\*\* Denotes MedPAR data not available for the provider for FY 2006.

<sup>3</sup> This provider, 140B10, is part of a multi-campus provider, 140010, that is comprised of campuses that are located in two different CBSAs. For the FY 2008 wage index, a new provider record was created, designated with a "B" in the 4th position of the provider number, to distinguish between the portion of the wages and hours of the multi-campus facility that is being allocated between the two different CBSAs. Please refer to the FY 2008 final rule, section III.H.1.7 "Geographic Reclassification for Multi-campus Hospitals," for more details on this provision.

<sup>4</sup> This provider, 220B74, is part of a multi-campus provider, 220074, that is comprised of campuses that are located in two different CBSAs. For the FY 2008 wage index, a new provider record was created, designated with a "B" in the 4th position of the provider number, to distinguish between the portion of the wages and hours of the multi-campus facility that is being allocated between the two different CBSAs. Please refer to the FY 2008 final rule, section III.H.1.7 "Geographic Reclassification for Multi-campus Hospitals," for more details on this provision.

■ 14. On pages 47503 through 47526, in Urban Areas by CBSA—FY 2008, the table is corrected to read as follows:  
 Table 4A.—Wage Index and Capital Geographic Adjustment Factor (GAF) for

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008

CBSA code	Urban area (constituent counties)	Wage index	GAF
10180	Abilene, TX ..... Callahan County, TX Jones County, TX Taylor County, TX	0.8241	0.8759
10380	Aguadilla-Isabela-San Sebastián, PR ..... Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR	0.3345	0.4724

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
10420	Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR Akron, OH Portage County, OH Summit County, OH	0.8700	0.9090
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8667	0.9067
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8668	0.9067
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9726	0.9812
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.7978	0.8567
10900	Allentown-Bethlehem-Easton, PA-NJ (PA Hospitals) Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	1.0004	1.0003
10900	<sup>2</sup> Allentown-Bethlehem-Easton, PA-NJ (NJ Hospitals) Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	1.1617	1.1081
11020	<sup>2</sup> Altoona, PA Blair County, PA	0.8350	0.8838
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9152	0.9411
11180	Ames, IA Story County, IA	0.9976	0.9984
11260	<sup>2</sup> Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.2084	1.1384
11300	Anderson, IN Madison County, IN	0.8965	0.9279
11340	Anderson, SC Anderson County, SC	0.9209	0.9451
11460	Ann Arbor, MI Washtenaw County, MI	1.0499	1.0339
11500	Anniston-Oxford, AL Calhoun County, AL	0.7976	0.8565
11540	<sup>2</sup> Appleton, WI Calumet County, WI Outagamie County, WI	0.9684	0.9783
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9202	0.9446
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9997	0.9998

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
12060 .....	<sup>1</sup> 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	0.9813	0.9872
12100 .....	Atlantic City, NJ ..... Atlantic County, NJ	1.2064	1.1371
12220 .....	Auburn-Opelika, AL ..... Lee County, AL	0.8076	0.8639
12260 .....	Augusta-Richmond County, GA-SC ..... Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9599	0.9724
12420 .....	<sup>1</sup> Austin-Round Rock, TX ..... Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9502	0.9656
12540 .....	<sup>2</sup> Bakersfield, CA ..... Kern County, CA	1.1736	1.1159
12580 .....	<sup>1</sup> 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	1.0031	1.0021
12620 .....	Bangor, ME ..... Penobscot County, ME	0.9882	0.9919
12700 .....	Barnstable Town, MA ..... Barnstable County, MA	1.2612	1.1722
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	0.8010	0.8590

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
12980 .....	Battle Creek, MI ..... Calhoun County, MI	1.0053	1.0036
13020 .....	Bay City, MI ..... Bay County, MI	0.9394	0.9581
13140 .....	Beaumont-Port Arthur, TX ..... Hardin County, TX Jefferson County, TX Orange County, TX	0.8616	0.9030
13380 .....	Bellingham, WA ..... Whatcom County, WA	1.1258	1.0845
13460 .....	Bend, OR ..... Deschutes County, OR	1.0586	1.0398
13644 .....	<sup>1</sup> Bethesda-Gaithersburg-Frederick, MD ..... Frederick County, MD Montgomery County, MD	1.1017	1.0686
13740 .....	Billings, MT ..... Carbon County, MT Yellowstone County, MT	0.8871	0.9212
13780 .....	Binghamton, NY ..... Broome County, NY Tioga County, NY	0.9068	0.9352
13820 .....	<sup>1</sup> 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	0.8856	0.9202
13900 .....	Bismarck, ND ..... Burleigh County, ND Morton County, ND	0.7311	0.8070
13980 .....	Blacksburg-Christiansburg-Radford, VA ..... Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8129	0.8677
14020 .....	Bloomington, IN ..... Greene County, IN Monroe County, IN Owen County, IN	0.9324	0.9532
14060 .....	Bloomington-Normal, IL ..... McLean County, IL	0.9484	0.9644
14260 .....	Boise City-Nampa, ID ..... Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9497	0.9653
14484 .....	<sup>1</sup> Boston-Quincy, MA ..... Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1844	1.1229
14500 .....	Boulder, CO ..... Boulder County, CO	1.0110	1.0075
14540 .....	Bowling Green, KY ..... Edmonson County, KY Warren County, KY	0.8086	0.8646
14740 .....	Bremerton-Silverdale, WA ..... Kitsap County, WA	1.0821	1.0555
14860 .....	Bridgeport-Stamford-Norwalk, CT ..... Fairfield County, CT	1.2779	1.1828
15180 .....	Brownsville-Harlingen, TX ..... Cameron County, TX	0.9193	0.9440
15260 .....	Brunswick, GA ..... Brantley County, GA Glynn County, GA McIntosh County, GA	0.9765	0.9838
15380 .....	<sup>1</sup> Buffalo-Niagara Falls, NY ..... Erie County, NY	0.9589	0.9717

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
15500 .....	Niagara County, NY	0.8604	0.9022
15540 .....	<sup>2</sup> Burlington, NC .....	1.0388	1.0264
	Alamance County, NC		
	<sup>2</sup> Burlington-South Burlington, VT .....		
	Chittenden County, VT		
	Franklin County, VT		
	Grand Isle County, VT		
15764 .....	<sup>1</sup> Cambridge-Newton-Framingham, MA .....	1.1217	1.0818
	Middlesex County, MA		
15804 .....	<sup>1,2</sup> Camden, NJ .....	1.1617	1.1081
	Burlington County, NJ		
	Camden County, NJ		
	Gloucester County, NJ		
15940 .....	Canton-Massillon, OH .....	0.8918	0.9246
	Carroll County, OH		
	Stark County, OH		
15980 .....	Cape Coral-Fort Myers, FL .....	0.9486	0.9645
	Lee County, FL		
16180 .....	<sup>2</sup> Carson City, NV .....	0.9702	0.9795
	Carson City, NV		
16220 .....	Casper, WY .....	0.9271	0.9495
	Natrona County, WY		
16300 .....	Cedar Rapids, IA .....	0.8685	0.9080
	Benton County, IA		
	Jones County, IA		
	Linn County, IA		
16580 .....	Champaign-Urbana, IL .....	0.9316	0.9526
	Champaign County, IL		
	Ford County, IL		
	Piatt County, IL		
16620 .....	Charleston, WV .....	0.8394	0.8870
	Boone County, WV		
	Clay County, WV		
	Kanawha County, WV		
	Lincoln County, WV		
	Putnam County, WV		
16700 .....	Charleston-North Charleston, SC .....	0.9102	0.9376
	Berkeley County, SC		
	Charleston County, SC		
	Dorchester County, SC		
16740 .....	<sup>1</sup> Charlotte-Gastonia-Concord, NC-SC .....	0.9506	0.9659
	Anson County, NC		
	Cabarrus County, NC		
	Gaston County, NC		
	Mecklenburg County, NC		
	Union County, NC		
	York County, SC		
16820 .....	Charlottesville, VA .....	0.9161	0.9418
	Albemarle County, VA		
	Fluvanna County, VA		
	Greene County, VA		
	Nelson County, VA		
	Charlottesville City, VA		
16860 .....	Chattanooga, TN-GA .....	0.8963	0.9278
	Catoosa County, GA		
	Dade County, GA		
	Walker County, GA		
	Hamilton County, TN		
	Marion County, TN		
	Sequatchie County, TN		
16940 .....	Cheyenne, WY .....	0.9205	0.9449
	Laramie County, WY		
16974 .....	<sup>1</sup> Chicago-Naperville-Joliet, IL .....	1.0588	1.0399
	Cook County, IL		
	DeKalb County, IL		
	DuPage County, IL		
	Grundy County, IL		
	Kane County, IL		
	Kendall County, IL		
	McHenry County, IL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
17020 .....	Will County, IL <sup>2</sup> Chico, CA .....	1.1736	1.1159
17140 .....	Butte County, CA <sup>1</sup> Cincinnati-Middletown, OH-KY-IN .....	0.9661	0.9767
	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 .....	0.8219	0.8743
	Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN		
17420 .....	Cleveland, TN .....	0.8171	0.8708
	Bradley County, TN Polk County, TN		
17460 .....	<sup>1</sup> Cleveland-Elyria-Mentor, OH .....	0.9345	0.9547
	Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH		
17660 .....	Coeur d'Alene, ID .....	0.9355	0.9554
	Kootenai County, ID		
17780 .....	College Station-Bryan, TX .....	0.9172	0.9425
	Brazos County, TX Burleson County, TX Robertson County, TX		
17820 .....	Colorado Springs, CO .....	0.9467	0.9632
	El Paso County, CO Teller County, CO		
17860 .....	Columbia, MO .....	0.8538	0.8974
	Boone County, MO Howard County, MO		
17900 .....	Columbia, SC .....	0.8830	0.9183
	Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC		
17980 .....	Columbus, GA-AL .....	0.9020	0.9318
	Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA		
18020 .....	Columbus, IN .....	0.9626	0.9742
	Bartholomew County, IN		
18140 .....	<sup>1</sup> Columbus, OH .....	1.0025	1.0017
	Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH		
18580 .....	Corpus Christi, TX .....	0.8456	0.8915

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
18700	Aransas County, TX Nueces County, TX San Patricio County, TX Corvallis, OR	1.0702	1.0476
19060	Benton County, OR <sup>2</sup> Cumberland, MD-WV (MD Hospitals)	0.8912	0.9242
19060	Allegany County, MD Mineral County, WV Cumberland, MD-WV (WV Hospitals)	0.7963	0.8556
19124	<sup>1</sup> 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	0.9786	0.9853
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8583	0.9007
19180	Danville, IL Vermilion County, IL	0.9245	0.9477
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8297	0.8800
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8894	0.9229
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9279	0.9500
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7832	0.8459
19500	<sup>2</sup> Decatur, IL Macon County, IL	0.8346	0.8835
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8944	0.9264
19740	<sup>1</sup> 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	1.0455	1.0309
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9158	0.9415
19804	<sup>1</sup> Detroit-Livonia-Dearborn, MI Wayne County, MI	1.0096	1.0066
20020	<sup>2</sup> Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7567	0.8262
20100	Dover, DE Kent County, DE	1.0397	1.0270

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
20220 .....	Dubuque, IA .....	0.8876	0.9216
	Dubuque County, IA .....		
20260 .....	Duluth, MN-WI .....	1.0082	1.0056
	Carlton County, MN .....		
	St. Louis County, MN .....		
	Douglas County, WI .....		
20500 .....	Durham, NC .....	0.9739	0.9821
	Chatham County, NC .....		
	Durham County, NC .....		
	Orange County, NC .....		
	Person County, NC .....		
20740 .....	<sup>2</sup> Eau Claire, WI .....	0.9684	0.9783
	Chippewa County, WI .....		
	Eau Claire County, WI .....		
20764 .....	<sup>1,2</sup> Edison, NJ .....	1.1617	1.1081
	Middlesex County, NJ .....		
	Monmouth County, NJ .....		
	Ocean County, NJ .....		
	Somerset County, NJ .....		
20940 .....	<sup>2</sup> El Centro, CA .....	1.1736	1.1159
	Imperial County, CA .....		
21060 .....	Elizabethtown, KY .....	0.8618	0.9032
	Hardin County, KY .....		
	Larue County, KY .....		
21140 .....	Elkhart-Goshen, IN .....	0.9541	0.9683
	Elkhart County, IN .....		
21300 .....	<sup>2</sup> Elmira, NY .....	0.8352	0.8840
	Chemung County, NY .....		
21340 .....	El Paso, TX .....	0.9141	0.9403
	El Paso County, TX .....		
21500 .....	Erie, PA .....	0.8503	0.8949
	Erie County, PA .....		
21660 .....	Eugene-Springfield, OR .....	1.1003	1.0676
	Lane County, OR .....		
21780 .....	<sup>2</sup> Evansville, IN-KY (IN Hospitals) .....	0.8569	0.8996
	Gibson County, IN .....		
	Posey County, IN .....		
	Vanderburgh County, IN .....		
	Warrick County, IN .....		
	Henderson County, KY .....		
	Webster County, KY .....		
21780 .....	Evansville, IN-KY (KY Hospitals) .....	0.8465	0.8922
	Gibson County, IN .....		
	Posey County, IN .....		
	Vanderburgh County, IN .....		
	Warrick County, IN .....		
	Henderson County, KY .....		
	Webster County, KY .....		
21820 .....	<sup>2</sup> Fairbanks, AK .....	1.2084	1.1384
	Fairbanks North Star Borough, AK .....		
21940 .....	Fajardo, PR .....	0.4366	0.5669
	Ceiba Municipio, PR .....		
	Fajardo Municipio, PR .....		
	Luquillo Municipio, PR .....		
22020 .....	<sup>2</sup> Fargo, ND-MN (MN Hospitals) .....	0.9114	0.9384
	Clay County, MN .....		
	Cass County, ND .....		
22020 .....	Fargo, ND-MN (ND Hospitals) .....	0.7944	0.8542
	Clay County, MN .....		
	Cass County, ND .....		
22140 .....	Farmington, NM .....	0.9283	0.9503
	San Juan County, NM .....		
22180 .....	Fayetteville, NC .....	0.9918	0.9944
	Cumberland County, NC .....		
	Hoke County, NC .....		
22220 .....	Fayetteville-Springdale-Rogers, AR-MO .....	0.8872	0.9213
	Benton County, AR .....		
	Madison County, AR .....		
	Washington County, AR .....		
	McDonald County, MO .....		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
22380 .....	Flagstaff, AZ ..... Coconino County, AZ	1.1552	1.1038
22420 .....	Flint, MI ..... Genesee County, MI	1.1013	1.0683
22500 .....	<sup>2</sup> Florence, SC ..... Darlington County, SC Florence County, SC	0.8708	0.9096
22520 .....	Florence-Muscle Shoals, AL ..... Colbert County, AL Lauderdale County, AL	0.7693	0.8356
22540 .....	Fond du Lac, WI ..... Fond du Lac County, WI	0.9888	0.9923
22660 .....	Fort Collins-Loveland, CO ..... Larimer County, CO	0.9580	0.9710
22744 .....	<sup>1</sup> Fort Lauderdale-Pompano Beach-Deerfield Beach, FL ..... Broward County, FL	1.0248	1.0169
22900 .....	Fort Smith, AR-OK ..... Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.8053	0.8622
23020 .....	<sup>2</sup> Fort Walton Beach-Crestview-Destin, FL ..... Okaloosa County, FL	0.8733	0.9114
23060 .....	Fort Wayne, IN ..... Allen County, IN Wells County, IN Whitley County, IN	0.9041	0.9333
23104 .....	<sup>1</sup> Fort Worth-Arlington, TX ..... Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9637	0.9750
23420 .....	<sup>2</sup> Fresno, CA ..... Fresno County, CA	1.1736	1.1159
23460 .....	Gadsden, AL ..... Etowah County, AL	0.8144	0.8688
23540 .....	Gainesville, FL ..... Alachua County, FL Gilchrist County, FL	0.9302	0.9517
23580 .....	Gainesville, GA ..... Hall County, GA	0.9419	0.9598
23844 .....	Gary, IN ..... Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9242	0.9475
24020 .....	Glens Falls, NY ..... Warren County, NY Washington County, NY	0.8523	0.8963
24140 .....	Goldensboro, NC ..... Wayne County, NC	0.9272	0.9496
24220 .....	<sup>2</sup> Grand Forks, ND-MN (MN Hospitals) ..... Polk County, MN Grand Forks County, ND	0.9114	0.9384
24220 .....	Grand Forks, ND-MN (ND Hospitals) ..... Polk County, MN Grand Forks County, ND	0.8049	0.8619
24300 .....	Grand Junction, CO ..... Mesa County, CO	1.0136	1.0093
24340 .....	Grand Rapids-Wyoming, MI ..... Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9374	0.9567
24500 .....	Great Falls, MT ..... Cascade County, MT	0.8761	0.9134
24540 .....	Greeley, CO ..... Weld County, CO	0.9996	0.9997
24580 .....	<sup>2</sup> Green Bay, WI .....	0.9684	0.9783

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
24660 .....	Brown County, WI Kewaunee County, WI Oconto County, WI Greensboro-High Point, NC .....	0.9107	0.9380
24780 .....	Guilford County, NC Randolph County, NC Rockingham County, NC Greenville, NC .....	0.9268	0.9493
24860 .....	Greene County, NC Pitt County, NC Greenville-Mauldin-Easley, SC .....	0.9637	0.9750
25020 .....	Greenville County, SC Laurens County, SC Pickens County, SC Guayama, PR .....	0.2944	0.4328
25060 .....	Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR Gulfport-Biloxi, MS .....	0.8608	0.9024
25180 .....	Hancock County, MS Harrison County, MS Stone County, MS Hagerstown-Martinsburg, MD-WV .....	0.9256	0.9484
25260 .....	Washington County, MD Berkeley County, WV Morgan County, WV <sup>2</sup> Hanford-Corcoran, CA .....	1.1736	1.1159
25420 .....	Kings County, CA Harrisburg-Carlisle, PA .....	0.9231	0.9467
25500 .....	Cumberland County, PA Dauphin County, PA Perry County, PA Harrisonburg, VA .....	0.8896	0.9230
25540 .....	Rockingham County, VA Harrisonburg City, VA <sup>1 2</sup> Hartford-West Hartford-East Hartford, CT .....	1.2433	1.1608
25620 .....	Hartford County, CT Middlesex County, CT Tolland County, CT <sup>2</sup> Hattiesburg, MS .....	0.7752	0.8400
25860 .....	Forrest County, MS Lamar County, MS Perry County, MS Hickory-Lenoir-Morganton, NC .....	0.8973	0.9285
25980 .....	Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC Hinesville-Fort Stewart, GA .....	0.7861	0.8481
26100 .....	Liberty County, GA Long County, GA Holland-Grand Haven, MI .....	0.9063	0.9348
26180 .....	Ottawa County, MI Honolulu, HI .....	1.1306	1.0877
26300 .....	Honolulu County, HI Hot Springs, AR .....	0.9106	0.9379
26380 .....	Garland County, AR Houma-Bayou Cane-Thibodaux, LA .....	0.7976	0.8565
26420 .....	Lafourche Parish, LA Terrebonne Parish, LA <sup>1</sup> Houston-Sugar Land-Baytown, TX .....	0.9997	0.9998
	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		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
26580	Waller County, TX Huntington-Ashland, WV-KY-OH ..... Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.8879	0.9218
26620	Huntsville, AL ..... Limestone County, AL Madison County, AL	0.9018	0.9317
26820	Idaho Falls, ID ..... Bonneville County, ID Jefferson County, ID	0.9273	0.9496
26900	<sup>1</sup> Indianapolis-Carmel, IN ..... Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9718	0.9806
26980	Iowa City, IA ..... Johnson County, IA Washington County, IA	0.9424	0.9602
27060	Ithaca, NY ..... Tompkins County, NY	0.9710	0.9800
27100	Jackson, MI ..... Jackson County, MI	0.9461	0.9628
27140	Jackson, MS ..... Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.7951	0.8547
27180	Jackson, TN ..... Chester County, TN Madison County, TN	0.8592	0.9013
27260	<sup>1</sup> Jacksonville, FL ..... Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9089	0.9367
27340	<sup>2</sup> Jacksonville, NC ..... Onslow County, NC	0.8604	0.9022
27500	Janesville, WI ..... Rock County, WI	0.9853	0.9899
27620	Jefferson City, MO ..... Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8703	0.9093
27740	<sup>2</sup> Johnson City, TN ..... Carter County, TN Unicoi County, TN Washington County, TN	0.7918	0.8523
27780	<sup>2</sup> Johnstown, PA ..... Cambria County, PA	0.8339	0.8830
27860	Jonesboro, AR ..... Craighead County, AR Poinsett County, AR	0.8503	0.8949
27900	Joplin, MO ..... Jasper County, MO Newton County, MO	0.9212	0.9453
28020	Kalamazoo-Portage, MI ..... Kalamazoo County, MI Van Buren County, MI	1.0501	1.0340

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
28100 .....	Kankakee-Bradley, IL .....	1.0145	1.0099
	Kankakee County, IL		
28140 .....	<sup>1</sup> Kansas City, MO-KS .....	0.9319	0.9528
	Franklin County, KS		
	Johnson County, KS		
	Leavenworth County, KS		
	Linn County, KS		
	Miami County, KS		
	Wyandotte County, KS		
	Bates County, MO		
	Caldwell County, MO		
	Cass County, MO		
	Clay County, MO		
	Clinton County, MO		
	Jackson County, MO		
	Lafayette County, MO		
	Platte County, MO		
	Ray County, MO		
28420 .....	<sup>2</sup> Kennewick-Richland-Pasco, WA .....	1.0559	1.0380
	Benton County, WA		
	Franklin County, WA		
28660 .....	Killeen-Temple-Fort Hood, TX .....	0.8304	0.8805
	Bell County, TX		
	Coryell County, TX		
	Lampasas County, TX		
28700 .....	<sup>2</sup> Kingsport-Bristol-Bristol, TN-VA (VA Hospitals) .....	0.8074	0.8637
	Hawkins County, TN		
	Sullivan County, TN		
	Bristol City, VA		
	Scott County, VA		
	Washington County, VA		
28700 .....	<sup>2</sup> Kingsport-Bristol-Bristol, TN-VA (TN Hospitals) .....	0.7918	0.8523
	Hawkins County, TN		
	Sullivan County, TN		
	Bristol City, VA		
	Scott County, VA		
	Washington County, VA		
28740 .....	Kingston, NY .....	0.9579	0.9710
	Ulster County, NY		
28940 .....	Knoxville, TN .....	0.8013	0.8592
	Anderson County, TN		
	Blount County, TN		
	Knox County, TN		
	Loudon County, TN		
	Union County, TN		
29020 .....	Kokomo, IN .....	0.9464	0.9630
	Howard County, IN		
	Tipton County, IN		
29100 .....	La Crosse, WI-MN .....	0.9699	0.9793
	Houston County, MN		
	La Crosse County, WI		
29140 .....	Lafayette, IN .....	0.8677	0.9074
	Benton County, IN		
	Carroll County, IN		
	Tippecanoe County, IN		
29180 .....	Lafayette, LA .....	0.8323	0.8819
	Lafayette Parish, LA		
	St. Martin Parish, LA		
29340 .....	Lake Charles, LA .....	0.7784	0.8424
	Calcasieu Parish, LA		
	Cameron Parish, LA		
29404 .....	Lake County-Kenosha County, IL-WI .....	1.0583	1.0396
	Lake County, IL		
	Kenosha County, WI		
29420 .....	Lake Havasu City-Kingman, AZ .....	0.9334	0.9539
	Mohave County, AZ		
29460 .....	Lakeland, FL .....	0.8835	0.9187
	Polk County, FL		
29540 .....	Lancaster, PA .....	0.9650	0.9759
	Lancaster County, PA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
29620 .....	Lansing-East Lansing, MI ..... Clinton County, MI Eaton County, MI Ingham County, MI	1.0048	1.0033
29700 .....	Laredo, TX ..... Webb County, TX	0.8501	0.8947
29740 .....	<sup>2</sup> Las Cruces, NM ..... Dona Ana County, NM	0.8966	0.9280
29820 .....	<sup>1</sup> Las Vegas-Paradise, NV ..... Clark County, NV	1.1453	1.0974
29940 .....	Lawrence, KS ..... Douglas County, KS	0.8170	0.8707
30020 .....	Lawton, OK ..... Comanche County, OK	0.8406	0.8879
30140 .....	<sup>2</sup> Lebanon, PA ..... Lebanon County, PA	0.8339	0.8830
30300 .....	<sup>2</sup> Lewiston, ID-WA (WA Hospitals) ..... Nez Perce County, ID Asotin County, WA	1.0559	1.0380
30300 .....	Lewiston, ID-WA (ID Hospitals) ..... Nez Perce County, ID Asotin County, WA	0.9226	0.9463
30340 .....	Lewiston-Auburn, ME ..... Androscoggin County, ME	0.9290	0.9508
30460 .....	Lexington-Fayette, KY ..... Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9003	0.9306
30620 .....	Lima, OH ..... Allen County, OH	0.9308	0.9521
30700 .....	Lincoln, NE ..... Lancaster County, NE Seward County, NE	0.9873	0.9913
30780 .....	Little Rock-North Little Rock-Conway, AR ..... Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8961	0.9276
30860 .....	Logan, UT-ID ..... Franklin County, ID Cache County, UT	0.9215	0.9456
30980 .....	Longview, TX ..... Gregg County, TX Rusk County, TX Upshur County, TX	0.8872	0.9213
31020 .....	Longview, WA ..... Cowlitz County, WA	1.1028	1.0693
31084 .....	<sup>1,2</sup> Los Angeles-Long Beach-Glendale, CA ..... Los Angeles County, CA	1.1736	1.1159
31140 .....	<sup>1</sup> Louisville-Jefferson County, 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	0.9030	0.9325
31180 .....	Lubbock, TX ..... Crosby County, TX	0.8642	0.9049

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
31340 .....	Lubbock County, TX Lynchburg, VA ..... Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8606	0.9023
31420 .....	Macon, GA ..... Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9749	0.9827
31460 .....	<sup>2</sup> Madera, CA ..... Madera County, CA	1.1736	1.1159
31540 .....	Madison, WI ..... Columbia County, WI Dane County, WI Iowa County, WI	1.1176	1.0791
31700 .....	<sup>2</sup> Manchester-Nashua, NH ..... Hillsborough County, NH	1.1260	1.0847
31900 .....	Mansfield, OH ..... Richland County, OH	0.9210	0.9452
32420 .....	Mayagüez, PR ..... Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3657	0.5021
32580 .....	McAllen-Edinburg-Mission, TX ..... Hidalgo County, TX	0.9136	0.9400
32780 .....	Medford, OR ..... Jackson County, OR	1.0298	1.0203
32820 .....	<sup>1</sup> 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	0.9314	0.9525
32900 .....	Merced, CA ..... Merced County, CA	1.1981	1.1318
33124 .....	<sup>1</sup> Miami-Miami Beach-Kendall, FL ..... Miami-Dade County, FL	1.0009	1.0006
33140 .....	Michigan City-La Porte, IN ..... LaPorte County, IN	0.8786	0.9152
33260 .....	Midland, TX ..... Midland County, TX	0.9712	0.9802
33340 .....	<sup>1</sup> Milwaukee-Waukesha-West Allis, WI ..... Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0296	1.0202
33460 .....	<sup>1</sup> 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	1.0897	1.0606
33540 .....	Missoula, MT ..... Missoula County, MT	0.8738	0.9118
33660 .....	Mobile, AL .....	0.7948	0.8545

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
33700 .....	Mobile County, AL	1.2020	1.1343
33740 .....	Modesto, CA .....	0.7869	0.8486
33780 .....	Stanislaus County, CA .....	0.9470	0.9634
33860 .....	Monroe, LA .....	0.8112	0.8665
34060 .....	Monroe, MI .....	0.8408	0.8880
34100 .....	Monroe County, MI .....	0.7918	0.8523
34580 .....	Montgomery, AL .....	1.0559	1.0380
34620 .....	Autauga County, AL .....	0.8569	0.8996
34740 .....	Elmore County, AL .....	0.9968	0.9978
34820 .....	Lowndes County, AL .....	0.8708	0.9096
34900 .....	Montgomery County, AL .....	1.3960	1.2567
34940 .....	Morgantown, WV .....	0.9619	0.9737
34980 .....	Monongalia County, WV .....	0.9619	0.9737
35004 .....	Preston County, WV .....	1.2878	1.1891
35084 .....	<sup>2</sup> Morristown, TN .....	1.1674	1.1118
35300 .....	Grainger County, TN .....	1.2433	1.1608
35380 .....	Hamblen County, TN .....	0.8712	0.9099
35644 .....	Jefferson County, TN .....	1.3230	1.2113
	Mount Vernon-Anacortes, WA .....		
	Skagit County, WA .....		
	<sup>2</sup> Muncie, IN .....		
	Delaware County, IN .....		
	Muskegon-Norton Shores, MI .....		
	Muskegon County, MI .....		
	<sup>2</sup> Myrtle Beach-Conway-North Myrtle Beach, SC .....		
	Horry County, SC .....		
	Napa, CA .....		
	Napa County, CA .....		
	Naples-Marco Island, FL .....		
	Collier County, FL .....		
	<sup>1</sup> Nashville-Davidson-Murfreesboro-Franklin, TN .....		
	Cannon County, TN .....		
	Cheatham County, TN .....		
	Davidson County, TN .....		
	Dickson County, TN .....		
	Hickman County, TN .....		
	Macon County, TN .....		
	Robertson County, TN .....		
	Rutherford County, TN .....		
	Smith County, TN .....		
	Sumner County, TN .....		
	Trousdale County, TN .....		
	Williamson County, TN .....		
	Wilson County, TN .....		
	<sup>1</sup> Nassau-Suffolk, NY .....		
	Nassau County, NY .....		
	Suffolk County, NY .....		
	<sup>1</sup> Newark-Union, NJ-PA .....		
	Essex County, NJ .....		
	Hunterdon County, NJ .....		
	Morris County, NJ .....		
	Sussex County, NJ .....		
	Union County, NJ .....		
	Pike County, PA .....		
	<sup>2</sup> New Haven-Milford, CT .....		
	New Haven County, CT .....		
	<sup>1</sup> 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 .....		
	<sup>1</sup> New York-White Plains-Wayne, NY-NJ .....		
	Bergen County, NJ .....		
	Hudson County, NJ .....		
	Passaic County, NJ .....		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY		
35660 .....	Niles-Benton Harbor, MI ..... Berrien County, MI	0.9134	0.9399
35980 .....	<sup>2</sup> Norwich-New London, CT ..... New London County, CT	1.2433	1.1608
36084 .....	<sup>1</sup> Oakland-Fremont-Hayward, CA ..... Alameda County, CA Contra Costa County, CA	1.5344	1.3407
36100 .....	<sup>2</sup> Ocala, FL ..... Marion County, FL	0.8733	0.9114
36140 .....	<sup>2</sup> Ocean City, NJ ..... Cape May County, NJ	1.1617	1.1081
36220 .....	Odessa, TX ..... Ector County, TX	0.9954	0.9968
36260 .....	Ogden-Clearfield, UT ..... Davis County, UT Morgan County, UT Weber County, UT	0.9053	0.9341
36420 .....	<sup>1</sup> Oklahoma City, OK ..... Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8754	0.9129
36500 .....	Olympia, WA ..... Thurston County, WA	1.1420	1.0952
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	0.9474	0.9637
36740 .....	<sup>1</sup> Orlando-Kissimmee, FL ..... Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9285	0.9505
36780 .....	<sup>2</sup> Oshkosh-Neenah, WI ..... Winnebago County, WI	0.9684	0.9783
36980 .....	Owensboro, KY ..... Davies County, KY Hancock County, KY McLean County, KY	0.8698	0.9089
37100 .....	<sup>2</sup> Oxnard-Thousand Oaks-Ventura, CA ..... Ventura County, CA	1.1736	1.1159
37340 .....	Palm Bay-Melbourne-Titusville, FL ..... Brevard County, FL	0.9380	0.9571
37380 .....	Palm Coast, FL ..... Flagler County, FL	0.8737	0.9117
37460 .....	<sup>2</sup> Panama City-Lynn Haven, FL ..... Bay County, FL	0.8733	0.9114
37620 .....	<sup>2</sup> Parkersburg-Marietta-Vienna, WV-OH (OH Hospitals) ..... Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8697	0.9088
37620 .....	Parkersburg-Marietta-Vienna, WV-OH (WV Hospitals) ..... Washington County, OH	0.8259	0.8772

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
37700 .....	Pleasants County, WV Wirt County, WV Wood County, WV Pascagoula, MS .....	0.8540	0.8976
37764 .....	George County, MS Jackson County, MS Peabody, MA .....	1.0600	1.0407
37860 .....	Essex County, MA <sup>2</sup> Pensacola-Ferry Pass-Brent, FL .....	0.8733	0.9114
37900 .....	Escambia County, FL Santa Rosa County, FL Peoria, IL .....	0.9385	0.9575
37964 .....	Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL <sup>1</sup> Philadelphia, PA .....	1.0892	1.0603
38060 .....	Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA <sup>1</sup> Phoenix-Mesa-Scottsdale, AZ .....	1.0111	1.0076
38220 .....	Maricopa County, AZ Pinal County, AZ Pine Bluff, AR .....	0.8152	0.8694
38300 .....	Cleveland County, AR Jefferson County, AR Lincoln County, AR <sup>1</sup> Pittsburgh, PA .....	0.8391	0.8868
38340 .....	Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA Pittsfield, MA .....	1.0053	1.0036
38540 .....	Berkshire County, MA Pocatello, ID .....	0.9187	0.9436
38660 .....	Bannock County, ID Power County, ID Ponce, PR .....	0.4262	0.5576
38860 .....	Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR Portland-South Portland-Biddeford, ME .....	0.9991	0.9994
38900 .....	Cumberland County, ME Sagadahoc County, ME p;York County, ME <sup>1</sup> Portland-Vancouver-Beaverton, OR-WA .....	1.1227	1.0825
38940 .....	Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA Port St. Lucie, FL .....	1.0036	1.0025
39100 .....	Martin County, FL St. Lucie County, FL Poughkeepsie-Newburgh-Middletown, NY .....	1.0983	1.0663
39140 .....	Dutchess County, NY Orange County, NY Prescott, AZ .....	0.9961	0.9973
39300 .....	Yavapai County, AZ <sup>1</sup> Providence-New Bedford-Fall River, RI-MA .....	1.0533	1.0362
	Bristol County, MA Bristol County, RI		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
39340	Kent County, RI Newport County, RI Providence County, RI Washington County, RI Provo-Orem, UT ..... Juab County, UT Utah County, UT	0.9481	0.9642
39380	<sup>2</sup> Pueblo, CO ..... Pueblo County, CO	0.9448	0.9619
39460	Punta Gorda, FL ..... Charlotte County, FL	0.9559	0.9696
39540	<sup>2</sup> Racine, WI ..... Racine County, WI	0.9684	0.9783
39580	Raleigh-Cary, NC ..... Franklin County, NC Johnston County, NC Wake County, NC	0.9663	0.9768
39660	Rapid City, SD ..... Meade County, SD Pennington County, SD	0.8686	0.9080
39740	Reading, PA ..... Berks County, PA	0.9414	0.9595
39820	Redding, CA ..... Shasta County, CA	1.2810	1.1848
39900	Reno-Sparks, NV ..... Storey County, NV Washoe County, NV	1.1063	1.0716
40060	<sup>1</sup> 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	0.9233	0.9468
40140	<sup>1,2</sup> Riverside-San Bernardino-Ontario, CA ..... Riverside County, CA San Bernardino County, CA	1.1736	1.1159
40220	Roanoke, VA ..... Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8889	0.9225
40340	Rochester, MN ..... Dodge County, MN Olmsted County, MN Wabasha County, MN	1.0491	1.0334
40380	<sup>1</sup> Rochester, NY ..... Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8919	0.9246
40420	Rockford, IL ..... Boone County, IL	0.9805	0.9866

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
40484 .....	Winnebago County, IL <sup>2</sup> Rockingham County--Strafford County, NH ..... Rockingham County, NH Strafford County, NH	1.1260	1.0847
40580 .....	Rocky Mount, NC ..... Edgecombe County, NC Nash County, NC	0.9008	0.9310
40660 .....	Rome, GA ..... Floyd County, GA	0.9548	0.9688
40900 .....	<sup>1</sup> Sacramento--Arden-Arcade--Roseville, CA ..... El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3068	1.2011
40980 .....	Saginaw-Saginaw Township North, MI ..... Saginaw County, MI	0.9123	0.9391
41060 .....	St. Cloud, MN ..... Benton County, MN Stearns County, MN	1.1059	1.0714
41100 .....	St. George, UT ..... Washington County, UT	0.9536	0.9680
41140 .....	St. Joseph, MO-KS ..... Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	0.8827	0.9181
41180 .....	<sup>1</sup> 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	0.8983	0.9292
41420 .....	Salem, OR ..... Marion County, OR Polk County, OR	1.0398	1.0271
41500 .....	Salinas, CA ..... Monterey County, CA	1.4594	1.2955
41540 .....	<sup>2</sup> Salisbury, MD ..... Somerset County, MD Wicomico County, MD	0.8912	0.9242
41620 .....	Salt Lake City, UT ..... Salt Lake County, UT Summit County, UT Tooele County, UT	0.9474	0.9637
41660 .....	San Angelo, TX ..... Irion County, TX Tom Green County, TX	0.8659	0.9061
41700 .....	<sup>1</sup> 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	0.8896	0.9230
41740 .....	<sup>1,2</sup> San Diego--Carlsbad--San Marcos, CA ..... San Diego County, CA	1.1736	1.1159

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
41780 .....	Sandusky, OH ..... Erie County, OH	0.8755	0.9130
41884 .....	<sup>1</sup> San Francisco-San Mateo-Redwood City, CA ..... Marin County, CA San Francisco County, CA San Mateo County, CA	1.4802	1.3081
41900 .....	San Germán-Cabo Rojo, PR ..... Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4603	0.5878
41940 .....	<sup>1</sup> San Jose-Sunnyvale-Santa Clara, CA ..... San Benito County, CA Santa Clara County, CA	1.5441	1.3465
41980 .....	<sup>1</sup> San Juan-Caguas-Guaynabo, PR ..... Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerio Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4526	0.5811
42020 .....	San Luis Obispo-Paso Robles, CA ..... San Luis Obispo County, CA	1.1952	1.1299
42044 .....	<sup>1,2</sup> Santa Ana-Anaheim-Irvine, CA ..... Orange County, CA	1.1736	1.1159
42060 .....	<sup>2</sup> Santa Barbara-Santa Maria-Goleta, CA ..... Santa Barbara County, CA	1.1736	1.1159
42100 .....	Santa Cruz-Watsonville, CA ..... Santa Cruz County, CA	1.5669	1.3601
42140 .....	Santa Fe, NM ..... Santa Fe County, NM	1.0683	1.0463
42220 .....	Santa Rosa-Petaluma, CA ..... Sonoma County, CA	1.4470	1.2879
42260 .....	Sarasota-Bradenton-Venice, FL ..... Manatee County, FL	0.9771	0.9843

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
42340 .....	Sarasota County, FL Savannah, GA .....	0.8891	0.9227
	Bryan County, GA Chatham County, GA Effingham County, GA		
42540 .....	<sup>2</sup> Scranton—Wilkes-Barre, PA .....	0.8346	0.8835
	Lackawanna County, PA Luzerne County, PA Wyoming County, PA		
42644 .....	<sup>1</sup> Seattle-Bellevue-Everett, WA .....	1.1363	1.0914
	King County, WA Snohomish County, WA		
42680 .....	Sebastian-Vero Beach, FL .....	0.9704	0.9796
	Indian River County, FL		
43100 .....	<sup>2</sup> Sheboygan, WI .....	0.9684	0.9783
	Sheboygan County, WI		
43300 .....	Sherman-Denison, TX .....	0.8531	0.8969
	Grayson County, TX		
43340 .....	Shreveport-Bossier City, LA .....	0.8552	0.8984
	Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA		
43580 .....	Sioux City, IA-NE-SD .....	0.9083	0.9363
	Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD		
43620 .....	Sioux Falls, SD .....	0.9554	0.9692
	Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD		
43780 .....	South Bend-Mishawaka, IN-MI .....	0.9643	0.9754
	St. Joseph County, IN Cass County, MI		
43900 .....	Spartanburg, SC .....	0.9395	0.9582
	Spartanburg County, SC		
44060 .....	<sup>2</sup> Spokane, WA .....	1.0559	1.0380
	Spokane County, WA		
44100 .....	Springfield, IL .....	0.8943	0.9264
	Menard County, IL Sangamon County, IL		
44140 .....	Springfield, MA .....	1.0451	1.0307
	Franklin County, MA Hampden County, MA Hampshire County, MA		
44180 .....	Springfield, MO .....	0.8791	0.9155
	Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO		
44220 .....	<sup>2</sup> Springfield, OH .....	0.8697	0.9088
	Clark County, OH		
44300 .....	State College, PA .....	0.8620	0.9033
	Centre County, PA		
44700 .....	Stockton, CA .....	1.1810	1.1207
	San Joaquin County, CA		
44940 .....	Sumter, SC .....	0.8899	0.9232
	Sumter County, SC		
45060 .....	Syracuse, NY .....	0.9950	0.9966
	Madison County, NY Onondaga County, NY Oswego County, NY		
45104 .....	Tacoma, WA .....	1.0934	1.0631
	Pierce County, WA		
45220 .....	Tallahassee, FL .....	0.9028	0.9324
	Gadsden County, FL Jefferson County, FL Leon County, FL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
45300 .....	Wakulla County, FL <sup>1</sup> Tampa-St. Petersburg-Clearwater, FL ..... Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9171	0.9425
45460 .....	Terre Haute, IN ..... Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.8824	0.9179
45500 .....	<sup>2</sup> Texarkana, TX-Texarkana, AR (TX Hospitals) ..... Miller County, AR Bowie County, TX	0.8198	0.8728
45500 .....	Texarkana, TX-Texarkana, AR (AR Hospitals) ..... Miller County, AR Bowie County, TX	0.7782	0.8422
45780 .....	Toledo, OH ..... Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9269	0.9493
45820 .....	Topeka, KS ..... Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8557	0.8988
45940 .....	<sup>2</sup> Trenton-Ewing, NJ ..... Mercer County, NJ	1.1617	1.1081
46060 .....	Tucson, AZ ..... Pima County, AZ	0.9417	0.9597
46140 .....	Tulsa, OK ..... Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8498	0.8945
46220 .....	Tuscaloosa, AL ..... Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8531	0.8969
46340 .....	Tyler, TX ..... Smith County, TX	0.9182	0.9432
46540 .....	Utica-Rome, NY ..... Herkimer County, NY Oneida County, NY	0.8774	0.9143
46660 .....	Valdosta, GA ..... Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8204	0.8732
46700 .....	Vallejo-Fairfield, CA ..... Solano County, CA	1.4433	1.2857
47020 .....	<sup>2</sup> Victoria, TX ..... Calhoun County, TX Goliad County, TX Victoria County, TX	0.8198	0.8728
47220 .....	Vineland-Millville-Bridgeton, NJ ..... Cumberland County, NJ	1.1617	1.1081
47260 .....	<sup>1</sup> 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	0.8777	0.9145

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Chesapeake City, VA		
	Hampton City, VA		
	Newport News City, VA		
	Norfolk City, VA		
	Poquoson City, VA		
	Portsmouth City, VA		
	Suffolk City, VA		
	Virginia Beach City, VA		
	Williamsburg City, VA		
47300 .....	<sup>2</sup> Visalia-Porterville, CA .....	1.1736	1.1159
	Tulare County, CA		
47380 .....	Waco, TX .....	0.8594	0.9014
	McLennan County, TX		
47580 .....	Warner Robins, GA .....	0.9614	0.9734
	Houston County, GA		
47644 .....	<sup>1</sup> Warren-Troy-Farmington Hills, MI .....	1.0034	1.0023
	Lapeer County, MI		
	Livingston County, MI		
	Macomb County, MI		
	Oakland County, MI		
	St. Clair County, MI		
47894 .....	<sup>1</sup> Washington-Arlington-Alexandria, DC-VA-MD-WV .....	1.0676	1.0458
	District of Columbia, DC		
	Calvert County, MD		
	Charles County, MD		
	Prince George's County, MD		
	Arlington County, VA		
	Clarke County, VA		
	Fairfax County, VA		
	Fauquier County, VA		
	Loudoun County, VA		
	Prince William County, VA		
	Spotsylvania County, VA		
	Stafford County, VA		
	Warren County, VA		
	Alexandria City, VA		
	Fairfax City, VA		
	Falls Church City, VA		
	Fredericksburg City, VA		
	Manassas City, VA		
	Manassas Park City, VA		
	Jefferson County, WV		
47940 .....	Waterloo-Cedar Falls, IA .....	0.8720	0.9105
	Black Hawk County, IA		
	Bremer County, IA		
	Grundy County, IA		
48140 .....	Wausau, WI .....	1.0005	1.0003
	Marathon County, WI		
48260 .....	<sup>2</sup> Weirton-Steubenville, WV-OH (OH Hospitals) .....	0.8697	0.9088
	Jefferson County, OH		
	Brooke County, WV		
	Hancock County, WV		
48260 .....	Weirton-Steubenville, WV-OH (WV Hospitals) .....	0.7889	0.8501
	Jefferson County, OH		
	Brooke County, WV		
	Hancock County, WV		
48300 .....	Wenatchee, WA .....	1.1276	1.0857
	Chelan County, WA		
	Douglas County, WA		
48424 .....	<sup>1</sup> West Palm Beach-Boca Raton-Boynton Beach, FL .....	0.9577	0.9708
	Palm Beach County, FL		
48540 .....	<sup>2</sup> Wheeling, WV-OH (OH Hospitals) .....	0.8697	0.9088
	Belmont County, OH		
	Marshall County, WV		
	Ohio County, WV		
48540 .....	<sup>2</sup> Wheeling, WV-OH (WV Hospitals) .....	0.7568	0.8263
	Belmont County, OH		
	Marshall County, WV		
	Ohio County, WV		
48620 .....	Wichita, KS .....	0.8939	0.9261

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA—FY 2008—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
48660	Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS Wichita Falls, TX	0.8203	0.8731
48700	Archer County, TX Clay County, TX Wichita County, TX <sup>2</sup> Williamsport, PA	0.8339	0.8830
48864	Lycoming County, PA Wilmington, DE-MD-NJ (DE, MD Hospitals)	1.0667	1.0452
48864	New Castle County, DE Cecil County, MD Salem County, NJ <sup>2</sup> Wilmington, DE-MD-NJ (NJ Hospitals)	1.1617	1.1081
48900	New Castle County, DE Cecil County, MD Salem County, NJ Wilmington, NC	0.9326	0.9533
49020	Brunswick County, NC New Hanover County, NC Pender County, NC Winchester, VA-WV	0.9846	0.9894
49180	Frederick County, VA Winchester City, VA Hampshire County, WV Winston-Salem, NC	0.9078	0.9359
49340	Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC Worcester, MA	1.1355	1.0909
49420	Worcester County, MA <sup>2</sup> Yakima, WA	1.0559	1.0380
49500	Yakima County, WA Yauco, PR	0.3201	0.4584
49620	Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR York-Hanover, PA	0.9426	0.9603
49660	York County, PA Youngstown-Warren-Boardman, OH-PA	0.8992	0.9298
49700	Mahoning County, OH Trumbull County, OH Mercer County, PA <sup>2</sup> Yuba City, CA	1.1736	1.1159
49740	Sutter County, CA Yuba County, CA Yuma, AZ	1.0086	1.0059
	Yuma County, AZ		

■ 15. On pages 47526 through 47527, in Areas By CBSA, the table is corrected to read as follows:  
Table 4B.—Wage Index and Capital Geographic Adjustment (GAF) for Rural

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT (GAF) FOR RURAL AREAS BY CBSA—FY 2008

CBSA code	Nonurban area	Wage index	GAF
01	Alabama	0.7567	0.8262
02	Alaska	1.2084	1.1384
03	Arizona	0.8855	0.9201
04	Arkansas	0.7516	0.8224
05	California	1.1736	1.1159
06	Colorado	0.9448	0.9619
07	Connecticut	1.2433	1.1608

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT (GAF) FOR RURAL AREAS BY CBSA—FY 2008—  
Continued

CBSA code	Nonurban area	Wage index	GAF
08	Delaware	1.0105	1.0072
10	Florida	0.8733	0.9114
11	Georgia	0.7861	0.8481
12	Hawaii	1.0741	1.0502
13	Idaho	0.7818	0.8449
14	Illinois	0.8346	0.8835
15	Indiana	0.8569	0.8996
16	Iowa	0.8476	0.8929
17	Kansas	0.7980	0.8568
18	Kentucky	0.7810	0.8443
19	Louisiana	0.7586	0.8276
20	Maine	0.8409	0.8881
21	Maryland	0.8912	0.9242
22	Massachusetts	0.9706	0.9798
23	Michigan	0.8909	0.9239
24	Minnesota	0.9114	0.9384
25	Mississippi	0.7752	0.8400
26	Missouri	0.8153	0.8695
27	Montana	0.8336	0.8828
28	Nebraska	0.8847	0.9195
29	Nevada	0.9702	0.9795
30	New Hampshire	1.1260	1.0847
31	New Jersey <sup>1</sup>	1.1617	1.1081
32	New Mexico	0.8966	0.9280
33	New York	0.8352	0.8840
34	North Carolina	0.8604	0.9022
35	North Dakota	0.7309	0.8068
36	Ohio	0.8697	0.9088
37	Oklahoma	0.7702	0.8363
38	Oregon	0.9957	0.9971
39	Pennsylvania	0.8339	0.8830
40	Puerto Rico <sup>1</sup>		
41	Rhode Island <sup>1</sup>		
42	South Carolina	0.8708	0.9096
43	South Dakota	0.8344	0.8834
44	Tennessee	0.7918	0.8523
45	Texas	0.8198	0.8728
46	Utah	0.8215	0.8740
47	Vermont	1.0388	1.0264
49	Virginia	0.8074	0.8637
50	Washington	1.0559	1.0380
51	West Virginia	0.7568	0.8263
52	Wisconsin	0.9684	0.9783
53	Wyoming	0.9164	0.9420

■ 15a. On pages 47527 through 47530, Geographic Adjustment (GAF) for CBSA, the table is corrected to read as in Table 4C.—Wage Index and Capital Hospitals That are Reclassified by follows:

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED BY CBSA—FY 2008

CBSA code	Area	Wage index	GAF
10500	Albany, GA	0.8667	0.9067
10580	Albany-Schenectady-Troy, NY	0.8668	0.9067
10740	Albuquerque, NM	0.9726	0.9812
10780	Alexandria, LA	0.7978	0.8567
10900	Allentown-Bethlehem-Easton, PA-NJ	1.0004	1.0003
11100	Amarillo, TX	0.9152	0.9411
11180	Ames, IA	0.9223	0.9461
11260	Anchorage, AK	1.2084	1.1384
11460	Ann Arbor, MI	1.0144	1.0098
11500	Anniston-Oxford, AL	0.7976	0.8565
12060	Atlanta-Sandy Springs-Marietta, GA	0.9813	0.9872
12260	Augusta-Richmond County, GA-SC	0.9599	0.9724
12420	Austin-Round Rock, TX	0.9502	0.9656
12580	Baltimore-Towson, MD	1.0031	1.0021

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED BY CBSA—FY 2008—Continued

CBSA code	Area	Wage index	GAF
12620	Bangor, ME	0.9882	0.9919
12940	Baton Rouge, LA	0.8010	0.8590
13020	Bay City, MI	0.9394	0.9581
13644	Bethesda-Gaithersburg-Frederick, MD	1.1017	1.0686
13780	Binghamton, NY	0.8775	0.9144
13820	Birmingham-Hoover, AL	0.8690	0.9108
13900	Bismarck, ND	0.7311	0.8070
13980	Blacksburg-Christiansburg-Radford, VA	0.7733	0.8386
14020	Bloomington, IN	0.8824	0.9179
14484	Boston-Quincy, MA	1.1304	1.0876
14740	Bremerton-Silverdale, WA	1.0821	1.0555
14860	Bridgeport-Stamford-Norwalk, CT	1.2342	1.1550
15380	Buffalo-Niagara Falls, NY	0.9589	0.9717
15540	Burlington-South Burlington, VT	0.9585	0.9714
15940	Canton-Massillon, OH	0.8807	0.9167
16180	Carson City, NV	0.9702	0.9795
16620	Charleston, WV	0.8394	0.8870
16700	Charleston-North Charleston, SC	0.9102	0.9376
16740	Charlotte-Gastonia-Concord, NC-SC	0.9342	0.9545
16820	Charlottesville, VA	0.9161	0.9418
16860	Chattanooga, TN-GA	0.8963	0.9278
16974	Chicago-Naperville-Joliet, IL	1.0472	1.0321
17140	Cincinnati-Middletown, OH-KY-IN	0.9661	0.9767
17300	Clarksville, TN-KY	0.8096	0.8653
17460	Cleveland-Elyria-Mentor, OH	0.9216	0.9456
17820	Colorado Springs, CO	0.9467	0.9632
17860	Columbia, MO	0.8538	0.8974
17980	Columbus, GA-AL	0.8588	0.9010
18140	Columbus, OH	0.9821	0.9877
18700	Corvallis, OR	1.0316	1.0215
19124	Dallas-Plano-Irving, TX	0.9681	0.9780
19340	Davenport-Moline-Rock Island, IA-IL	0.8894	0.9229
19380	Dayton, OH	0.9279	0.9500
19460	Decatur, AL	0.7832	0.8459
19740	Denver-Aurora, CO	1.0455	1.0309
19804	Detroit-Livonia-Dearborn, MI	1.0096	1.0066
20100	Dover, DE	1.0105	1.0072
20260	Duluth, MN-WI	0.9956	0.9970
20500	Durham, NC	0.9739	0.9821
20764	Edison, NJ	1.1617	1.1081
21060	Elizabethtown, KY	0.7979	0.8568
21500	Erie, PA	0.8352	0.8840
21660	Eugene-Springfield, OR	1.0708	1.0480
21780	Evansville, IN-KY (KY Hospitals)	0.8123	0.8673
21780	Evansville, IN-KY (IN Hospitals)	0.8569	0.8996
22020	Fargo, ND-MN	0.7944	0.8542
22180	Fayetteville, NC	0.9594	0.9720
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8715	0.9101
22380	Flagstaff, AZ	1.1187	1.0798
22420	Flint, MI	1.0244	1.0166
22520	Florence-Muscle Shoals, AL	0.7752	0.8400
22540	Fond du Lac, WI	0.9716	0.9805
22660	Fort Collins-Loveland, CO	0.9580	0.9710
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0248	1.0169
23020	Fort Walton Beach-Crestview-Destin, FL	0.8733	0.9114
23060	Fort Wayne, IN	0.9041	0.9333
23104	Fort Worth-Arlington, TX	0.9637	0.9750
23540	Gainesville, FL	0.9302	0.9517
23844	Gary, IN	0.9242	0.9475
24300	Grand Junction, CO	1.0136	1.0093
24340	Grand Rapids-Wyoming, MI	0.9374	0.9567
24500	Great Falls, MT	0.8761	0.9134
24540	Greeley, CO	0.9745	0.9825
24580	Green Bay, WI (MI Hospitals)	0.9357	0.9555
24580	Green Bay, WI (WI Hospitals)	0.9684	0.9783
24660	Greensboro-High Point, NC	0.9107	0.9380
24780	Greenville, NC	0.9268	0.9493
24860	Greenville-Mauldin-Easley, SC	0.9404	0.9588
25060	Gulfport-Biloxi, MS	0.8217	0.8742
25420	Harrisburg-Carlisle, PA	0.9116	0.9386

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED BY CBSA—FY 2008—Continued

CBSA code	Area	Wage index	GAF
25540 .....	Hartford-West Hartford-East Hartford, CT (CT Hospitals) .....	1.2433	1.1608
25540 .....	Hartford-West Hartford-East Hartford, CT (MA Hospitals) .....	1.1026	1.0692
25860 .....	Hickory-Lenoir-Morganton, NC .....	0.8815	0.9173
26180 .....	Honolulu, HI .....	1.1306	1.0877
26420 .....	Houston-Sugar Land-Baytown, TX .....	0.9997	0.9998
26580 .....	Huntington-Ashland, WV-KY-OH .....	0.8725	0.9108
26620 .....	Huntsville, AL .....	0.8725	0.9040
26820 .....	Idaho Falls, ID .....	0.9273	0.9496
26900 .....	Indianapolis-Carmel, IN .....	0.9590	0.9717
26980 .....	Iowa City, IA .....	0.9138	0.9401
27060 .....	Ithaca, NY .....	0.9710	0.9800
27140 .....	Jackson, MS .....	0.7951	0.8547
27180 .....	Jackson, TN .....	0.8435	0.8900
27260 .....	Jacksonville, FL .....	0.9089	0.9367
27620 .....	Jefferson City, MO .....	0.8703	0.9093
27780 .....	Johnstown, PA .....	0.8339	0.8830
27860 .....	Jonesboro, AR .....	0.8503	0.8949
27900 .....	Joplin, MO .....	0.8967	0.9281
28020 .....	Kalamazoo-Portage, MI .....	1.0147	1.0100
28140 .....	Kansas City, MO-KS .....	0.9319	0.9528
28420 .....	Kennewick-Richland-Pasco, WA (ID Hospitals) .....	0.9615	0.9735
28420 .....	Kennewick-Richland-Pasco, WA (WA Hospitals) .....	1.0559	1.0380
28700 .....	Kingsport-Bristol-Bristol, TN-VA .....	0.7810	0.8443
28740 .....	Kingston, NY .....	0.9271	0.9495
28940 .....	Knoxville, TN .....	0.8013	0.8592
29180 .....	Lafayette, LA .....	0.8323	0.8819
29404 .....	Lake County-Kenosha County, IL-WI .....	1.0583	1.0396
29460 .....	Lakeland, FL .....	0.8835	0.9187
29540 .....	Lancaster, PA .....	0.9650	0.9759
29620 .....	Lansing-East Lansing, MI .....	0.9907	0.9936
29740 .....	Las Cruces, NM .....	0.8966	0.9280
29820 .....	Las Vegas-Paradise, NV .....	1.1223	1.0822
30020 .....	Lawton, OK .....	0.8071	0.8635
30460 .....	Lexington-Fayette, KY .....	0.8797	0.9160
30620 .....	Lima, OH .....	0.9308	0.9521
30700 .....	Lincoln, NE .....	0.9627	0.9743
30780 .....	Little Rock-North Little Rock-Conway, AR .....	0.8725	0.9108
30860 .....	Logan, UT-ID .....	0.9215	0.9456
30980 .....	Longview, TX .....	0.8872	0.9213
31084 .....	Los Angeles-Long Beach-Santa Ana, CA .....	1.1736	1.1159
31140 .....	Louisville-Jefferson County, KY-IN .....	0.9030	0.9325
31340 .....	Lynchburg, VA .....	0.8606	0.9023
31420 .....	Macon, GA .....	0.9568	0.9702
31540 .....	Madison, WI .....	1.0997	1.0672
31700 .....	Manchester-Nashua, NH .....	1.1260	1.0847
32780 .....	Medford, OR .....	1.0147	1.0100
32820 .....	Memphis, TN-MS-AR .....	0.8964	0.9278
33124 .....	Miami-Miami Beach-Kendall, FL .....	1.0009	1.0006
33340 .....	Milwaukee-Waukesha-West Allis, WI .....	1.0296	1.0202
33460 .....	Minneapolis-St. Paul-Bloomington, MN-WI .....	1.0897	1.0606
33540 .....	Missoula, MT .....	0.8738	0.9118
33700 .....	Modesto, CA .....	1.2020	1.1343
33740 .....	Monroe, LA .....	0.7765	0.8409
33860 .....	Montgomery, AL .....	0.8112	0.8665
34060 .....	Morgantown, WV .....	0.8256	0.8770
34740 .....	Muskegon-Norton Shores, MI .....	0.9475	0.9637
34820 .....	Myrtle Beach-Conway-North Myrtle Beach, SC .....	0.8708	0.9096
34980 .....	Nashville-Davidson-Murfreesboro-Franklin, TN .....	0.9364	0.9560
35004 .....	Nassau-Suffolk, NY .....	1.2626	1.1731
35084 .....	Newark-Union, NJ-PA (NJ Hospitals) .....	1.1617	1.1081
35084 .....	Newark-Union, NJ-PA (PA, NY Hospitals) .....	1.1571	1.1051
35300 .....	New Haven-Milford, CT .....	1.2433	1.1608
35380 .....	New Orleans-Metairie-Kenner, LA .....	0.8712	0.9099
35644 .....	New York-White Plains-Wayne, NY-NJ .....	1.3003	1.1970
35980 .....	Norwich-New London, CT .....	1.1733	1.1157
36084 .....	Oakland-Fremont-Hayward, CA .....	1.5344	1.3407
36140 .....	Ocean City, NJ .....	1.0499	1.0339
36220 .....	Odessa, TX .....	0.9523	0.9671
36420 .....	Oklahoma City, OK .....	0.8754	0.9129
36500 .....	Olympia, WA .....	1.1288	1.0865

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED BY CBSA—FY 2008—Continued

CBSA code	Area	Wage index	GAF
36740	Orlando-Kissimmee, FL	0.9171	0.9425
37700	Pascagoula, MS	0.8540	0.8976
37860	Pensacola-Ferry Pass-Brent, FL	0.8123	0.8673
37900	Peoria, IL	0.9226	0.9463
37964	Philadelphia, PA (DE, PA Hospitals)	1.0766	1.0518
37964	Philadelphia, PA (NJ Hospitals)	1.1617	1.1081
38220	Pine Bluff, AR	0.7956	0.8551
38300	Pittsburgh, PA (PA, WV Hospitals)	0.8391	0.8868
38300	Pittsburgh, PA (OH Hospitals)	0.8697	0.9088
38340	Pittsfield, MA	1.0388	1.0264
38860	Portland-South Portland-Biddeford, ME	0.9590	0.9717
38900	Portland-Vancouver-Beaverton, OR-WA	1.1227	1.0825
38940	Port St. Lucie, FL	0.9852	0.9898
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0763	1.0516
39140	Prescott, AZ	0.9577	0.9708
39340	Provo-Orem, UT	0.9380	0.9571
39580	Raleigh-Cary, NC	0.9475	0.9637
39740	Reading, PA	0.9414	0.9595
39820	Redding, CA	1.2652	1.1748
39900	Reno-Sparks, NV	1.0852	1.0576
40060	Richmond, VA	0.9233	0.9468
40220	Roanoke, VA	0.8746	0.9123
40340	Rochester, MN	1.0491	1.0334
40380	Rochester, NY	0.8919	0.9246
40420	Rockford, IL	0.9704	0.9796
40484	Rockingham County, NH	1.0174	1.0119
40660	Rome, GA	0.9388	0.9577
40900	Sacramento—Arden-Arcade—Roseville, CA	1.2919	1.1917
40980	Saginaw-Saginaw Township North, MI	0.8975	0.9286
41060	St. Cloud, MN	1.0323	1.0220
41100	St. George, UT	0.9536	0.9680
41140	St. Joseph, MO-KS	0.8827	0.9181
41180	St. Louis, MO-IL	0.8983	0.9292
41620	Salt Lake City, UT	0.9474	0.9637
41700	San Antonio, TX	0.8896	0.9230
41884	San Francisco-San Mateo-Redwood City, CA	1.4802	1.3081
41980	San Juan-Caguas-Guaynabo, PR	0.4526	0.5811
42044	Santa Ana-Anaheim-Irvine, CA	1.1736	1.1159
42140	Santa Fe, NM	1.0380	1.0259
42220	Santa Rosa-Petaluma, CA	1.4147	1.2682
42260	Sarasota-Bradenton-Venice, FL	0.9771	0.9843
42340	Savannah, GA	0.8891	0.9227
42644	Seattle-Bellevue-Everett, WA	1.1209	1.0813
43300	Sherman-Denison, TX	0.8531	0.8969
43340	Shreveport-Bossier City, LA	0.8552	0.8984
43580	Sioux City, IA-NE-SD	0.8847	0.9195
43620	Sioux Falls, SD	0.9373	0.9566
43780	South Bend-Mishawaka, IN-MI	0.9504	0.9658
43900	Spartanburg, SC	0.9395	0.9582
44060	Spokane, WA	1.0227	1.0155
44180	Springfield, MO	0.8620	0.9033
44940	Sumter, SC	0.8708	0.9096
45060	Syracuse, NY	0.9603	0.9726
45220	Tallahassee, FL	0.8454	0.8914
45300	Tampa-St. Petersburg-Clearwater, FL	0.9171	0.9425
45500	Texarkana, TX-Texarkana, AR	0.7782	0.8422
45780	Toledo, OH	0.9269	0.9493
45820	Topeka, KS	0.8452	0.8912
46140	Tulsa, OK	0.8498	0.8945
46220	Tuscaloosa, AL	0.8162	0.8702
46340	Tyler, TX	0.9182	0.9432
46700	Vallejo-Fairfield, CA	1.4268	1.2756
47260	Virginia Beach-Norfolk-Newport News, VA	0.8777	0.9145
47894	Washington-Arlington-Alexandria, DC-VA	1.0676	1.0458
48140	Wausau, WI	1.0005	1.0003
48620	Wichita, KS	0.8718	0.9103
48700	Williamsport, PA	0.8339	0.8830
48864	Wilmington, DE-MD-NJ (NJ Hospitals)	1.1617	1.1081
48864	Wilmington, DE-MD-NJ (DE Hospitals)	1.0667	1.0452
48900	Wilmington, NC	0.9157	0.9415

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED BY CBSA—FY 2008—Continued

CBSA code	Area	Wage index	GAF
49180 .....	Winston-Salem, NC .....	0.9078	0.9359
49340 .....	Worcester, MA .....	1.1260	1.0847
49660 .....	Youngstown-Warren-Boardman, OH-PA .....	0.8698	0.9089
04 .....	Rural Arkansas .....	0.7586	0.8276
05 .....	Rural California .....	1.1736	1.1159
07 .....	Rural Connecticut .....	1.2433	1.1608
10 .....	Rural Florida .....	0.8733	0.9114
14 .....	Rural Illinois .....	0.8346	0.8835
16 .....	Rural Iowa .....	0.8476	0.8929
17 .....	Rural Kansas .....	0.7980	0.8568
22 .....	Rural Massachusetts .....	0.9706	0.9798
23 .....	Rural Michigan .....	0.8909	0.9239
24 .....	Rural Minnesota .....	0.9114	0.9384
25 .....	Rural Mississippi .....	0.7752	0.8400
26 .....	Rural Missouri .....	0.8153	0.8695
29 .....	Rural Nevada .....	0.8707	0.9095
30 .....	Rural New Hampshire .....	1.0533	1.0362
33 .....	Rural New York .....	0.8352	0.8840
34 .....	Rural North Carolina .....	0.8604	0.9022
36 .....	Rural Ohio .....	0.8697	0.9088
37 .....	Rural Oklahoma .....	0.7702	0.8363
38 .....	Rural Oregon .....	0.9957	0.9971
39 .....	Rural Pennsylvania (PA Hospitals) .....	0.8339	0.8830
39 .....	Rural Pennsylvania (NY Hospitals) .....	0.8352	0.8840
44 .....	Rural Tennessee .....	0.7918	0.8523
45 .....	Rural Texas .....	0.8198	0.8728
47 .....	Rural Vermont .....	0.9428	0.9605
49 .....	Rural Virginia .....	0.8074	0.8637
50 .....	Rural Washington .....	1.0559	1.0380
53 .....	Rural Wyoming .....	0.9010	0.9311

■ 16. On pages 47531 through 47539, Table 4J.—Out-Migration Adjustment—FY 2008 is corrected by—

■ a. Adding the following entries (in numerical order):

TABLE 4J.—OUT-MIGRATION ADJUSTMENT—FY 2008

Provider No.	Reclassified for FY 2008	Out-migration adjustment	Qualifying county name	County code
390056 .....	.....	0.0036	HUNTINGDON .....	39380
390110 .....	*	0.0003	CAMBRIA .....	39160
390117 .....	.....	0.0002	BEDFORD .....	39100
390125 .....	.....	0.0022	WAYNE .....	39760
390130 .....	*	0.0003	CAMBRIA .....	39160

■ b. Correcting the following entries:

Provider No.	Reclassified for FY 2008	Out-migration adjustment	Qualifying county name	County code
010022 .....	*	0.1128	CHEROKEE .....	01090
010061 .....	.....	0.0542	JACKSON .....	01350
010110 .....	.....	0.0215	BULLOCK .....	01050
010158 .....	*	0.0023	FRANKLIN .....	01290
040014 .....	*	0.0199	WHITE .....	04720
040071 .....	*	0.0149	JEFFERSON .....	04340
040100 .....	*	0.0199	WHITE .....	04720
180070 .....	.....	0.0240	GRAYSON .....	18420
190044 .....	.....	0.0261	ACADIA .....	19000
190106 .....	*	0.0102	ALLEN .....	19010
190133 .....	.....	0.0102	ALLEN .....	19010
230021 .....	*	0.0101	BERRIEN .....	23100
230078 .....	*	0.0101	BERRIEN .....	23100

Provider No.	Reclassified for FY 2008	Out-migration adjustment	Qualifying county name	County code
330008	*	0.0126	WYOMING	33900
330010		0.0067	MONTGOMERY	33380
330033		0.0223	CHENANGO	33080
330047		0.0067	MONTGOMERY	33380
330073	*	0.0151	GENESEE	33290
330094	*	0.0503	COLUMBIA	33200
330103	*	0.0131	CATTARAUGUS	33040
330132		0.0131	CATTARAUGUS	33040
330175		0.0260	CORTLAND	33210
330235	*	0.0306	CAYUGA	33050
330276		0.0036	FULTON	33280
330386	*	0.0745	SULLIVAN	33710
360002		0.0141	ASHLAND	36020
360125	*	0.0133	ASHTABULA	36030
360245	*	0.0133	ASHTABULA	36030
370015	*	0.0366	MAYES	37480
370169		0.0163	MCINTOSH	37450
370172		0.0258	LATIMER	37380
370214		0.0121	GARVIN	37240
380022	*	0.0067	LINN	38210
380029		0.0075	MARION	38230
380051		0.0075	MARION	38230
380056		0.0075	MARION	38230
390008		0.0060	LAWRENCE	39450
390016	*	0.0060	LAWRENCE	39450
390052		0.0047	CLEARFIELD	39230
390065	*	0.0532	ADAMS	39000
390113	*	0.0053	CRAWFORD	39260
390122		0.0053	CRAWFORD	39260
390138	*	0.0218	FRANKLIN	39350
390146		0.0022	WARREN	39740
390150		0.0031	GREENE	39370
390151	*	0.0218	FRANKLIN	39350
390201		0.1170	MONROE	39550
390236		0.0003	BRADFORD	39130
450090		0.0650	COOKE	45340
450210		0.0151	PANOLA	45842
450236		0.0389	HOPKINS	45654
450395	*	0.0441	POLK	45850
450451		0.0536	SOMERVELL	45893
450573		0.0126	JASPER	45690
450596	*	0.0743	HOOD	45653
450770	*	0.0182	MILAM	45795
450838		0.0126	JASPER	45690
460017		0.0383	BOX ELDER	46010
460039	*	0.0383	BOX ELDER	46010
490110		0.0185	MONTGOMERY	49600
510018	*	0.0188	JACKSON	51170

■ 17. On page 47543, in Table 5.—List of Proposed Medicare Severity-Diagnosis Related Groups (MS-DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay, 9th through 10th lines from the

bottom (MS-DRG 237), the MS-DRG title “Major cardiovas procedures w MCC or thoracic aortic anuerysm repair” is corrected to read “Major cardiovas procedures w MCC or thoracic aortic aneurysm repair”.

■ 18. On pages 48127 through 48138, Table 9A.—Hospital Reclassifications and Redesignations—FY 2008, is corrected by—

■ a. Adding the following entries (in numerical order):

TABLE 9A.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS—FY 2008

Provider No.	Geographic CBSA	Reclassified CBSA	LUGAR
340085	34	24660	LUGAR
340096	34	24660	LUGAR

■ b. Correcting the following entries:

Provider No.	Geographic CBSA	Reclassified CBSA	LUGAR
010005 .....	01	13820	
010083 .....	01	37860	
100252 .....	10	38940	
160064 .....	16	24	
180116 .....	18	14	
230069 .....	47644	22420	
230279 .....	47644	22420	
300019 .....	30	49340	
390016 .....	39	49660	
420068 .....	42	12260	

■ c. Deleting the following entries:

Provider No.	Geographic CBSA	Reclassified CBSA	LUGAR
070004 .....	07	25540	

■ 19. On page 48138, in Table 9C—Hospitals Redesignated as Rural Under

Section 1886(D)(8)(E) of the Act—FY 2008,

■ a. Adding the following entry:

TABLE 9C.—HOSPITALS REDESIGNATED AS RURAL UNDER SECTION 1886(d)(8)(E) OF THE ACT—FY 2008

Provider No.	Geographic CBSA	Redesignated rural area
070004 .....	07	07

■ b. Deleting the following entries:

Provider No.	Geographic CBSA	Redesignated rural area
250126 .....	32820	25
330044 .....	46540	33
390201 .....	39	39

■ 20. On pages 48139 through 48143, in Table 10—Geometric Mean Plus the Lesser of .75 of the National Adjusted Operating Standardized Payment Amount (Increased to Reflect the Difference Between Costs and Charges) or .75 of One Standard Deviation of Mean Charges By Medicare Severity-Diagnosis-Related Group (MS-DRG) September 2007, the table is corrected to read as follows:

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007 <sup>1</sup>

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007 <sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
1 .....	652	\$344,965
2 .....	335	178,077
3 .....	24,400	248,253
4 .....	21,825	149,223
5 .....	634	167,698
6 .....	296	92,300
7 .....	378	134,541
8 .....	583	92,291
9 .....	1,388	97,033
10 .....	182	73,439
11 .....	1,297	71,629
12 .....	1,956	51,548

MS-DRG	Number of cases	Threshold
13 .....	1,476	36,934
20 .....	910	138,395
21 .....	566	108,059
22 .....	249	74,798
23 .....	3,564	81,017
24 .....	2,168	57,349
25 .....	8,493	77,708
26 .....	12,059	52,345
27 .....	14,191	41,279
28 .....	1,623	74,162
29 .....	3,089	45,892
30 .....	3,592	29,994

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
31	1,061	60,319
32	3,064	35,473
33	4,237	28,788
34	821	58,366
35	2,911	41,559
36	7,454	36,536
37	4,803	51,760
38	16,531	32,783
39	53,619	23,940
40	4,585	57,534
41	8,005	39,475
42	5,216	34,225
52	1,188	29,314
53	590	21,941
54	4,750	30,207
55	16,945	24,914
56	7,800	28,293
57	48,665	18,154
58	796	28,685
59	2,676	21,475
60	4,240	16,415
61	1,368	53,021
62	2,320	41,994
63	1,150	36,278
64	56,448	33,838
65	115,423	26,274
66	91,644	19,975
67	1,403	30,784
68	12,512	21,801
69	104,325	17,613
70	7,165	33,363
71	10,283	26,043
72	5,811	19,097
73	8,728	27,006
74	32,760	19,857
75	1,229	33,940
76	861	22,530
77	1,112	33,089
78	1,386	23,660
79	896	18,688
80	2,095	24,178
81	8,250	15,979
82	1,664	34,222
83	2,070	28,410
84	2,527	21,042
85	5,383	34,770
86	10,921	26,131
87	11,827	18,483
88	730	30,524
89	2,836	22,350
90	3,285	16,402
91	6,763	29,348
92	15,467	20,636
93	15,043	15,988
94	1,533	55,249
95	1,101	41,885
96	749	35,508
97	1,266	50,367
98	1,065	35,770

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
99	637	29,993
100	16,012	28,452
101	57,312	17,754
102	1,373	24,462
103	15,199	15,977
113	592	31,352
114	593	19,667
115	1,110	25,665
116	715	23,533
117	1,406	15,540
121	609	21,777
122	666	12,422
123	2,865	17,881
124	684	24,196
125	4,742	15,308
129	1,401	38,048
130	1,063	27,826
131	895	36,601
132	910	26,200
133	2,057	31,609
134	3,781	19,478
135	430	34,407
136	503	21,916
137	847	26,988
138	926	17,071
139	1,710	19,625
146	696	35,189
147	1,457	25,199
148	924	17,390
149	39,487	14,828
150	945	25,221
151	6,840	12,717
152	2,363	22,142
153	16,167	14,126
154	1,857	28,005
155	4,431	20,298
156	4,969	14,819
157	1,164	28,366
158	3,158	19,955
159	2,365	14,144
163	13,502	78,295
164	18,484	47,951
165	14,267	37,896
166	20,398	57,263
167	21,074	39,812
168	5,555	30,190
175	12,032	33,115
176	40,330	25,127
177	57,526	35,853
178	72,497	29,843
179	26,495	23,293
180	22,628	33,006
181	32,425	26,930
182	6,085	21,762
183	1,679	29,882
184	4,279	21,041
185	2,607	14,730
186	8,586	31,506
187	10,362	25,623

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
188	4,840	19,425
189	105,009	28,871
190	57,361	27,668
191	126,608	22,656
192	193,798	17,011
193	88,637	29,440
194	274,002	23,196
195	142,476	16,909
196	5,173	30,804
197	7,087	25,433
198	4,822	19,617
199	3,279	33,336
200	8,321	23,384
201	3,470	16,338
202	32,849	19,060
203	40,990	13,891
204	26,244	16,200
205	5,816	26,183
206	22,615	17,512
207	46,394	81,116
208	79,797	41,198
215	154	151,759
216	8,437	161,665
217	7,940	116,686
218	2,963	97,861
219	10,112	131,295
220	14,302	93,766
221	7,644	81,206
222	2,862	150,230
223	5,774	116,590
224	1,930	138,296
225	5,882	109,282
226	7,078	112,846
227	50,687	88,685
228	3,099	124,478
229	4,351	88,302
230	1,797	72,656
231	1,484	138,732
232	1,799	107,834
233	16,996	118,259
234	39,349	86,701
235	9,680	95,702
236	33,005	68,278
237	22,981	84,121
238	43,967	53,451
239	13,900	59,228
240	13,862	40,593
241	2,927	30,258
242	17,243	63,731
243	40,609	50,001
244	65,831	42,215
245	6,081	54,178
246	41,300	65,050
247	272,543	46,578
248	5,558	58,095
249	29,332	41,926
250	5,768	53,597
251	39,992	38,457
252	44,846	48,379

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold	MS-DRG	Number of cases	Threshold	MS-DRG	Number of cases	Threshold
253	52,457	42,799	336	12,815	43,028	413	850	37,464
254	53,894	34,643	337	8,636	32,645	414	5,643	59,249
255	2,624	38,475	338	1,513	58,111	415	7,154	40,651
256	3,944	29,782	339	3,289	39,784	416	6,018	30,401
257	694	21,430	340	3,551	29,763	417	16,735	46,504
258	599	49,935	341	878	43,009	418	28,654	36,528
259	7,342	35,268	342	2,662	32,030	419	37,427	27,109
260	872	47,344	343	6,796	22,560	420	738	62,571
261	2,921	28,434	344	897	51,692	421	1,118	37,066
262	3,284	21,635	345	3,090	33,743	422	359	28,797
263	792	29,050	346	2,758	25,650	423	1,528	64,728
264	30,336	39,267	347	1,577	36,658	424	934	44,735
280	61,020	35,556	348	4,295	27,837	425	148	35,267
281	62,050	27,916	349	5,539	17,498	432	16,397	30,662
282	57,249	21,202	350	1,802	41,241	433	9,146	21,794
283	16,022	31,160	351	4,663	28,395	434	931	15,756
284	5,089	23,429	352	8,835	18,578	435	12,004	32,768
285	3,008	16,066	353	3,076	44,775	436	14,157	26,543
286	23,379	40,310	354	9,041	30,871	437	4,304	23,744
287	173,151	27,701	355	16,621	21,562	438	14,497	31,770
288	3,262	48,397	356	8,411	57,523	439	25,932	25,153
289	1,471	35,157	357	8,336	39,727	440	26,506	17,450
290	447	27,554	358	2,477	30,901	441	14,036	28,994
291	184,689	28,978	368	3,069	31,642	442	13,192	22,508
292	245,075	22,187	369	4,850	24,300	443	6,445	16,775
293	200,858	16,283	370	3,104	18,383	444	12,529	31,098
294	1,756	20,506	371	16,940	31,940	445	17,390	25,361
295	1,631	12,987	372	23,722	26,565	446	16,434	18,758
296	1,844	26,646	373	14,227	19,299	453	852	162,880
297	893	18,216	374	9,505	34,329	454	1,700	108,929
298	518	11,608	375	20,165	26,487	455	1,715	83,971
299	17,570	27,652	376	4,486	20,960	456	770	132,654
300	49,533	20,057	377	50,797	30,740	457	2,084	93,326
301	37,733	14,452	378	118,928	22,456	458	1,282	76,734
302	7,919	23,176	379	95,521	17,322	459	3,212	91,537
303	81,896	14,065	380	2,934	32,394	460	51,227	61,558
304	2,116	24,249	381	5,702	25,732	461	1,071	78,539
305	36,019	13,919	382	4,681	18,936	462	14,292	59,070
306	1,385	27,621	383	1,307	28,319	463	5,317	58,653
307	6,479	17,568	384	8,723	19,941	464	6,589	40,810
308	33,741	27,325	385	2,119	33,547	465	2,748	30,419
309	85,320	19,164	386	7,449	24,853	466	3,914	70,267
310	156,223	13,820	387	5,105	19,162	467	14,340	53,210
311	25,143	12,408	388	18,375	29,402	468	21,479	45,754
312	170,267	16,986	389	47,827	21,609	469	29,879	56,061
313	222,163	13,782	390	47,010	15,176	470	412,628	41,640
314	60,587	30,464	391	47,836	24,945	471	2,241	71,677
315	33,354	22,371	392	308,502	16,603	472	6,629	48,431
316	18,077	15,239	393	24,053	29,051	473	22,659	39,703
326	11,616	86,235	394	48,058	22,377	474	2,857	47,792
327	11,348	49,558	395	24,695	16,159	475	3,709	34,424
328	8,994	31,776	405	3,949	82,201	476	1,560	23,529
329	48,381	78,380	406	5,420	49,150	477	2,262	56,466
330	68,497	46,859	407	2,195	36,259	478	7,379	41,529
331	29,611	34,874	408	1,682	68,546	479	10,118	33,437
332	1,897	72,500	409	1,771	46,881	480	25,993	50,038
333	6,490	45,769	410	693	35,861	481	74,669	37,400
334	3,751	33,986	411	985	65,604	482	49,780	31,682
335	7,194	67,329	412	1,098	47,829	483	6,572	44,224

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
484	17,287	37,116
485	1,152	55,598
486	2,066	41,446
487	1,345	33,438
488	2,541	33,291
489	6,198	25,879
490	21,668	34,188
491	57,424	22,157
492	4,761	47,689
493	16,833	36,093
494	29,419	27,047
495	1,888	49,241
496	5,499	34,230
497	7,196	26,140
498	1,258	36,484
499	1,173	20,709
500	1,359	47,246
501	3,956	30,660
502	6,635	21,338
503	743	38,507
504	2,274	30,836
505	3,142	22,627
506	921	23,455
507	840	33,134
508	2,717	24,377
509	674	24,413
510	994	38,902
511	4,183	30,425
512	12,088	21,576
513	1,104	28,445
514	1,175	18,054
515	3,601	50,784
516	11,512	37,218
517	17,926	30,512
533	835	26,641
534	3,647	14,482
535	6,888	26,445
536	34,492	14,330
537	694	19,017
538	1,139	12,077
539	3,397	33,210
540	4,317	26,844
541	1,787	20,216
542	6,196	32,537
543	18,834	24,660
544	12,389	16,758
545	4,061	33,829
546	6,159	23,684
547	4,717	16,961
548	592	32,765
549	1,139	25,050
550	855	16,440
551	9,580	29,101
552	88,568	17,262
553	2,820	24,394
554	20,429	13,865
555	2,006	21,701
556	19,316	13,456
557	3,196	28,862

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
558	14,252	17,984
559	1,646	27,879
560	4,208	19,203
561	7,439	12,631
562	5,051	26,435
563	36,361	14,373
564	1,622	27,207
565	3,385	19,726
566	2,673	14,394
573	5,721	44,174
574	12,468	32,291
575	6,221	24,293
576	563	44,956
577	2,305	31,194
578	3,228	21,726
579	3,359	42,777
580	11,019	28,957
581	12,249	19,890
582	5,787	22,538
583	9,356	17,024
584	801	29,761
585	1,687	19,824
592	4,026	29,336
593	13,080	21,992
594	2,828	15,050
595	1,092	29,669
596	5,792	18,108
597	555	29,879
598	1,502	23,600
599	342	14,643
600	611	21,165
601	841	13,706
602	21,456	26,689
603	132,037	16,799
604	2,652	25,273
605	22,943	15,043
606	1,371	23,068
607	7,242	13,623
614	1,429	44,368
615	1,594	32,675
616	1,145	57,759
617	6,944	36,246
618	268	26,622
619	675	60,353
620	2,007	41,181
621	6,560	35,401
622	1,241	43,098
623	3,392	32,373
624	392	23,639
625	1,107	40,316
626	2,751	27,124
627	14,146	17,672
628	3,297	50,934
629	4,125	39,855
630	551	30,353
637	16,431	26,705
638	46,657	17,852
639	36,178	12,405
640	56,149	23,941

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
641	189,293	15,306
642	1,570	23,214
643	5,072	30,682
644	12,220	23,221
645	8,140	17,134
652	10,695	57,592
653	1,591	83,566
654	3,387	53,551
655	1,514	40,254
656	3,739	56,724
657	7,946	38,715
658	7,957	31,512
659	4,484	50,338
660	7,985	36,151
661	4,264	28,963
662	998	41,812
663	2,288	29,503
664	4,543	21,878
665	693	47,196
666	2,405	30,723
667	3,765	17,825
668	3,768	39,711
669	13,307	27,864
670	12,685	17,652
671	917	28,723
672	940	17,260
673	12,678	43,299
674	13,848	38,497
675	8,371	31,040
682	76,428	30,004
683	128,229	25,089
684	28,358	16,191
685	2,520	18,480
686	1,596	31,201
687	3,467	24,317
688	1,098	16,621
689	55,794	25,628
690	201,347	16,948
691	908	32,075
692	653	23,510
693	2,256	27,726
694	19,345	16,454
695	982	24,038
696	10,646	13,740
697	585	16,016
698	21,255	27,668
699	27,064	21,858
700	11,141	15,265
707	6,053	34,718
708	15,996	27,483
709	796	33,764
710	2,015	28,014
711	953	33,995
712	793	18,806
713	12,009	24,773
714	32,647	14,452
715	662	34,056
716	1,367	26,199
717	666	31,477

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
718	601	17,543
722	881	29,137
723	2,078	23,821
724	648	14,696
725	808	23,669
726	3,956	15,110
727	1,106	26,372
728	6,224	15,600
729	603	22,510
730	533	13,176
734	1,528	39,509
735	1,278	24,152
736	842	68,884
737	3,487	39,490
738	912	26,791
739	980	48,231
740	4,638	31,701
741	6,330	22,182
742	11,685	29,876
743	34,686	19,452
744	1,634	28,622
745	2,080	18,005
746	2,664	27,832
747	11,073	19,176
748	21,289	18,499
749	1,048	42,913
750	477	22,403
754	1,097	31,820
755	3,219	24,284
756	783	15,311
757	1,326	31,141
758	1,659	24,086
759	1,141	17,474
760	1,815	17,766
761	1,844	12,285
765	2,606	19,738
766	2,664	13,500
767	123	14,158
768	10	28,478
769	87	29,998
770	188	15,884
774	1,476	11,268
775	5,343	8,224
776	495	14,028
777	180	17,674
778	494	7,925
779	107	12,859
780	50	5,097
781	3,062	11,922
782	129	7,495
790	1	10,827
793	1	7,090
799	631	76,342
800	730	45,469
801	581	35,340
802	693	51,857
803	1,030	33,782
804	978	23,443
808	8,276	33,952

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
809	15,783	24,977
810	3,694	19,852
811	18,481	24,756
812	83,743	16,735
813	15,112	25,347
814	1,649	29,803
815	3,483	23,384
816	2,274	16,506
820	1,490	83,859
821	2,593	40,850
822	2,108	28,928
823	2,452	64,899
824	3,130	40,654
825	1,940	29,661
826	566	77,470
827	1,354	40,255
828	851	29,066
829	1,386	44,420
830	520	24,753
834	5,293	50,471
835	1,458	30,782
836	1,554	23,571
837	1,638	85,975
838	942	41,585
839	1,368	27,109
840	15,248	37,643
841	11,355	28,752
842	7,431	22,897
843	1,498	32,661
844	2,893	25,174
845	988	19,989
846	2,498	37,572
847	23,816	25,371
848	1,695	18,894
849	1,507	26,987
853	31,591	74,755
854	6,945	48,940
855	429	35,391
856	6,215	64,089
857	10,284	35,977
858	3,362	28,305
862	7,481	32,136
863	21,957	20,215
864	19,959	19,205
865	2,032	28,087
866	9,474	15,750
867	5,387	37,561
868	2,507	24,361
869	1,129	18,549
870	13,815	88,041
871	204,810	33,436
872	92,533	25,285
876	971	40,644
880	10,578	14,303
881	4,636	10,640
882	1,673	11,353
883	799	16,323
884	21,747	17,521
885	78,937	14,233

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
886	377	13,044
887	427	17,908
894	4,627	7,335
895	6,777	14,018
896	5,447	25,161
897	36,860	12,339
901	924	48,917
902	2,217	31,729
903	1,687	22,773
904	980	39,726
905	779	24,032
906	751	22,406
907	8,164	52,964
908	8,553	34,748
909	5,427	25,547
913	828	26,516
914	7,082	15,123
915	928	24,223
916	5,418	9,886
917	14,498	28,124
918	35,052	13,329
919	10,672	27,989
920	14,259	20,512
921	9,672	13,742
922	1,027	26,629
923	4,264	14,600
927	187	176,294
928	819	59,742
929	448	32,840
933	158	31,755
934	701	23,838
935	2,209	21,582
939	428	42,826
940	732	32,880
941	1,058	25,659
945	5,485	19,140
946	2,759	16,452
947	6,597	22,649
948	34,624	14,331
949	767	17,139
950	463	11,233
951	1,008	13,228
955	456	82,503
956	3,769	54,259
957	1,324	98,333
958	1,221	65,665
959	295	44,668
963	1,509	46,361
964	2,538	32,371
965	1,105	23,186
969	676	74,006
970	159	41,731
974	6,358	38,799
975	4,516	27,832
976	2,770	20,952
977	5,016	23,311
981	26,444	75,131
982	19,320	52,343
983	6,143	37,852

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
984 .....	671	55,995
985 .....	1,108	38,751
986 .....	833	27,917
987 .....	8,040	53,125

TABLE 10.—GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITY—DIAGNOSIS-RELATED GROUP (MS-DRG) SEPTEMBER 2007<sup>1</sup>—Continued

MS-DRG	Number of cases	Threshold
988 .....	12,302	35,632
989 .....	6,162	25,762
999 .....	30	11,270

■ 21. On pages 48143 in Table 11—FY 2008 MS-LTC-DRGs, Relative Weights, Geometric Average Length of Stay, Short-Stay Outlier Threshold, and IPPS Comparable Threshold, line 13 (MS-LTC-DRG 010) is corrected as follows:

MS-LTC-DRG	MS-DRG title	FY 2006 LTCH cases	Relative weight <sup>1</sup>	Geometric average length of stay	Short stay outlier threshold <sup>2</sup>	IPPS comparable threshold <sup>3</sup>
010 .....	Pancreas transplant .....	0	0.0000	0.0	0.0	0.0

■ 22. On page 48157, 2nd column, 1st partial paragraph, line 6, the figure “\$3.8” is corrected to read “\$4.0”.

■ 23. On page 48159, 1st column, 5th full paragraph, line 5, the figure “3.5” is corrected to read “3.7”.

■ 24. On page 48161, in Table I—Impact Analysis of Changes for FY 2008, column 12 and listed footnotes are corrected to read as follows:

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2008

	Corrected all FY 2008 changes w/ CMI adjustment and estimated growth <sup>12</sup> (12)
All Hospitals .....	3.7
By Geographic Location:	
Urban hospitals .....	3.9
Large urban areas .....	4.3
Other urban areas .....	3.3
Rural hospitals .....	2.4
Bed Size (Urban):	
0–99 beds .....	2.2
100–199 beds .....	3.6
200–299 beds .....	3.8
300–499 beds .....	4.2
500 or more beds .....	4.1
Bed Size (Rural):	
0–49 beds .....	1.3
50–99 beds .....	2.4
100–149 beds .....	2.5
150–199 beds .....	2.5
200 or more beds .....	3.1
Urban by Region:	
New England .....	3.7
Middle Atlantic .....	3.5
South Atlantic .....	4

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2008—Continued

	Corrected all FY 2008 changes w/ CMI adjustment and estimated growth <sup>12</sup> (12)
East North Central .....	3.7
East South Central .....	3.3
West North Central .....	3.6
West South Central .....	3.8
Mountain .....	3.8
Pacific .....	5.2
Puerto Rico .....	4.1
Rural by Region:	
New England .....	2.4
Middle Atlantic .....	2.6
South Atlantic .....	2.8
East North Central .....	2.7
East South Central .....	2.1
West North Central .....	2.6
West South Central .....	0.9
Mountain .....	3.2
Pacific .....	4.2
By Payment Classification:	
Urban hospitals .....	3.9
Large urban areas .....	4.3
Other urban areas .....	3.3
Rural areas .....	2.5
Teaching Status:	
Nonteaching .....	3.3
Fewer than 100 residents .....	3.8
100 or more residents .....	4.4
Urban DSH:	
Non-DSH .....	3
100 or more beds .....	4.1
Less than 100 beds .....	3.1
Rural DSH:	
SCH .....	2.9
RRC .....	2.5
100 or more beds .....	2.6
Less than 100 beds .....	1.4

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2008—Continued

	Corrected all FY 2008 changes w/ CMI adjustment and estimated growth <sup>12</sup> (12)
Urban teaching and DSH:	
Both teaching and DSH .....	4.2
Teaching and no DSH .....	3.2
No teaching and DSH .....	3.8
No teaching and no DSH ..	2.9
Special Hospital Types:	
RRC .....	2.7
SCH .....	2.5
MDH .....	3.2
SCH and RRC .....	2.9
MDH and RRC .....	2.6
Type of Ownership:	
Voluntary .....	3.6
Proprietary .....	4
Government .....	3.9
Medicare Utilization as a Percent of Inpatient Days:	
0–25 .....	5.5
25–50 .....	4.3
50–65 .....	3.1
Over 65 .....	2.5
FY 2008 Reclassifications by the Medicare Geographic Classification Review Board:	
All Reclassified Hospitals ..	3.4
Non-Reclassified Hospitals ..	3.8
Urban Hospitals Reclassified .....	3.7
Urban Nonreclassified, FY 2008 .....	3.9
All Rural Hospitals Reclassified Full Year FY 2008 .....	2.8

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2008—Continued

	Corrected all FY 2008 changes w/ CMI adjustment and estimated growth <sup>12</sup> (12)
Rural Nonreclassified Hospitals Full Year FY 2008	1.7
All Section 401 Reclassified Hospitals .....	2.6
Other Reclassified Hospitals (Section 1886(d)(8)(B)) .....	2.8
Former 508 Hospitals .....	0.6
Specialty Hospitals:	
Cardiac specialty Hospitals	0.8

<sup>6</sup> Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2008 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2008. Reclassification for prior years has no bearing on the payment impacts shown here. This column reflects the geographic budget neutrality factor of 0.991290.

<sup>7</sup> This column displays the effects of the changes in the rural floor budget neutrality adjustment applied on the wage index instead of on the standardized amount. The column reflects a rural floor budget neutrality factor of 0.996744.

■ 25. On page 48164,

- a. First column, 2nd full paragraph, line 40, the figure “0.996563” is corrected to read “0.996383”.
- b. Second column,
  - (1) First partial paragraph, (a) Line 3, the figure “0.9” is corrected to read “0.8”.
  - (b) Line 7, the figure “0.9” is corrected to read “0.8”.
  - (c) Line 11, the figure “- 0.9” is corrected to read “- 0.8”.
  - (2) Third full paragraph, (a) Line 13, the figure “0.8” is corrected to read “1.0”.
  - (b) Line 17, the figure “1.2” is corrected to read “1.3”.
- 26. On page 48165,
  - a. First column, 2nd full paragraph, line 3, the figure “0.996563.” is corrected to read “0.996383”.
  - b. Second column, 3rd full paragraph, line 13, the figure “1.8” is corrected to read “2.2”.
  - c. Third column, 1st partial paragraph, line 5, the figure “0.996660 (- 0.33 percent)” is corrected to read “0.996744 (- 0.33 percent).”
- 27. On page 48166,
  - a. Second column, 2nd full paragraph, line 5, the figure “3.5” is corrected to read “3.7”.
  - b. Third column,
    - (1) 1st partial paragraph, (a) Line 1 through 3, the phrase “increase by 3.5 percent. Hospitals in

urban areas will experience an estimated 3.8 percent increase” is corrected to read “increase by 3.7 percent. Hospitals in urban areas will experience an estimated 3.9 percent increase.”

(b) Line 7, the figure “3.2” is corrected to read “3.3”.

(c) Line 10, the figure “1.2” is corrected to read “2.4”.

(2) 1st full paragraph, line 5, the figure “4.2” is corrected to read “4.1”.

(3) Second full paragraph, (a) Lines 3 and 4, the phrase “an estimated decrease in payments by 0.1 percent” is corrected to read “an estimated increase in payments by 0.9 percent.”

(b) Line 7, the phrase “among rural regions with 2.5 and 2.0 percent” is corrected to read, “among rural regions with 4.2 and 2.6 percent.”

(4) Third full paragraph, line 3, the figure “0.2” is corrected to read “2.9”.

(5) Fourth full paragraph, (a) Line 2, the figure “3.6” is corrected to read “3.7”.

(b) Line 7, the figure “1.8” is corrected to read “2.8”.

■ 28. On pages 48167 and 48168, in Table II—Impact Analysis of Changes for FY 2008 Operating Prospective Payment System, the table is corrected to read as follows:

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2008 OPERATING PROSPECTIVE PAYMENT SYSTEM [Payments per case]

	Number of hospitals	Average FY 2007 payment per case <sup>1</sup>	Average FY 2008 payment per case <sup>1</sup>	All FY 2008 changes
	(1)	(2)	(3)	(4)
All hospitals .....	3534	\$8,875	\$9,205	3.7
By Geographic Location:				
Urban hospitals .....	2539	9,283	9,642	3.9
Large urban areas (populations over 1 million) .....	1406	9,697	10,117	4.3
Other urban areas (populations of 1 million or fewer) .....	1133	8,784	9,072	3.3
Rural hospitals .....	995	6,550	6,709	2.4
Bed Size (Urban):				
0-99 beds .....	630	7,093	7,250	2.2
100-199 beds .....	851	7,858	8,138	3.6
200-299 beds .....	480	8,723	9,051	3.8
300-499 beds .....	411	9,722	10,131	4.2
500 or more beds .....	167	11,695	12,178	4.1
Bed Size (Rural):				
0-49 beds .....	337	5,499	5,569	1.3
50-99 beds .....	372	5,948	6,091	2.4
100-149 beds .....	173	6,477	6,637	2.5
150-199 beds .....	68	7,258	7,438	2.5
200 or more beds .....	45	8,243	8,496	3.1
Urban by Region:				
New England .....	122	9,704	10,059	3.7
Middle Atlantic .....	350	10,177	10,531	3.5
South Atlantic .....	390	8,781	9,130	4
East North Central .....	395	8,866	9,189	3.7
East South Central .....	166	8,426	8,703	3.3
West North Central .....	157	8,943	9,265	3.6
West South Central .....	355	8,788	9,124	3.8
Mountain .....	153	9,208	9,559	3.8

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2008 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued  
[Payments per case]

	Number of hospitals	Average FY 2007 payment per case <sup>1</sup>	Average FY 2008 payment per case <sup>1</sup>	All FY 2008 changes
	(1)	(2)	(3)	(4)
Pacific .....	398	11,065	11,642	5.2
Puerto Rico .....	53	4,364	4,544	4.1
Rural by Region:				
New England .....	23	8,924	9,137	2.4
Middle Atlantic .....	72	6,709	6,882	2.6
South Atlantic .....	173	6,302	6,481	2.8
East North Central .....	122	6,742	6,922	2.7
East South Central .....	177	6,222	6,356	2.1
West North Central .....	115	6,847	7,024	2.6
West South Central .....	199	6,009	6,065	0.9
Mountain .....	77	6,639	6,852	3.2
Pacific .....	37	7,899	8,227	4.2
By Payment Classification:				
Urban hospitals .....	2578	9,265	9,623	3.9
Large urban areas (populations over 1 million) .....	1425	9,683	10,101	4.3
Other urban areas (populations of 1 million or fewer) .....	1153	8,762	9,048	3.3
Rural areas .....	956	6,583	6,748	2.5
Teaching Status:				
Non-teaching .....	2480	7,474	7,722	3.3
Fewer than 100 Residents .....	815	8,982	9,321	3.8
100 or more Residents .....	239	12,934	13,498	4.4
Urban DSH:				
Non-DSH .....	859	8,015	8,253	3
100 or more beds .....	1512	9,762	10,163	4.1
Less than 100 beds .....	355	6,562	6,766	3.1
Rural DSH:				
SCH .....	384	6,046	6,219	2.9
RRC .....	203	7,296	7,482	2.5
100 or more beds .....	46	6,013	6,172	2.6
Less than 100 beds .....	175	5,344	5,421	1.4
Urban teaching and DSH:				
Both teaching and DSH .....	807	10,688	11,139	4.2
Teaching and no DSH .....	186	8,801	9,079	3.2
No teaching and DSH .....	1060	7,979	8,283	3.8
No teaching and no DSH .....	525	7,620	7,843	2.9
Rural Hospital Types:				
RRC .....	194	7,606	7,811	2.7
SCH .....	367	6,484	6,645	2.5
MDH .....	150	5,707	5,891	3.2
SCH and RRC .....	99	7,689	7,913	2.9
MDH and RRC .....	8	7,155	7,339	2.6
Type of Ownership:				
Voluntary .....	2064	9,011	9,338	3.6
Proprietary .....	823	8,088	8,409	4
Government .....	597	9,077	9,430	3.9
Medicare Utilization as a Percent of Inpatient Days:				
0–25 .....	230	12,612	13,300	5.5
25–50 .....	1289	10,085	10,519	4.3
50–65 .....	1451	7,766	8,006	3.1
Over 65 .....	440	6,932	7,103	2.5
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2008 Reclassifications:				
All Reclassified Hospitals FY 2008 .....	757	8,486	8,776	3.4
All Non-Reclassified Hospitals FY 2008 .....	2777	8,995	9,337	3.8
Urban Reclassified Hospitals FY 2008 .....	391	9,261	9,601	3.7
Urban Non-reclassified Hospitals FY 2008 .....	2147	9,288	9,652	3.9
Rural Reclassified Hospitals FY 2008 .....	366	7,085	7,284	2.8
Rural Nonreclassified Hospitals FY 2008 .....	567	5,809	5,905	1.7
All Section 401 Reclassified Hospitals .....	26	6,977	7,155	2.6
Other Reclassified Hospitals (Section 1886(d)(8)(B)) .....	63	6,300	6,476	2.8
Former Section 508 Hospitals .....	107	9,628	9,689	0.6
Specialty Hospitals				
Cardiac Specialty Hospitals .....	22	10,707	10,796	0.8

<sup>1</sup> These payment amounts per case do not reflect any estimates of annual case-mix increase.

- 29. On page 48171,
  - a. First column, 2nd full paragraph, lines 5 and 6, the phrase “of 0.9997, an outlier adjustment factor of 0.9517, and an exceptions adjustment factor.” is corrected to read, “of 0.9996, an outlier adjustment factor of 0.9513, and an exceptions adjustment factor.”
  - b. Third column,
    - (1) First partial paragraph,
      - (a) Lines 4 and 5, the phrase “East North Central urban region, the Middle Atlantic rural region, and Puerto Rico.” is corrected to read “East North Carolina

urban region (and 0.1 percent increase in Puerto Rico).”

(b) Lines 16 and 17, the phrase “Central rural region to a 0.1 percent decrease in the East North Central rural region.” is corrected to read “Central rural region to 0.2 percent decrease in both the East North Central rural and East South Central rural regions.”

(2) First full paragraph, lines 3 through 6, the phrase “while both proprietary and government hospitals are estimated to experience a 1.2 percent increases in payment.” is corrected to read “while proprietary and

government hospitals are estimated to experience a 1.3 percent and 1.2 percent increases in payments, respectively.”

(3) Third full paragraph, lines 6 and 7, the phrase “payments of 0.4 percent, as compared to the 0.1 percent decrease” is corrected to read “payments of 0.5 percent, as compared to the 0.3 percent decrease.”

■ 30. On page 48172 and 48173, in Table III—Comparison of Total Payments Per Case (FY 2007 Payments Compared to FY 2008 Payments), the table is corrected as follows:

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE  
[FY 2007 payments compared to FY 2008 payments]

	Number of hospitals	Average FY 2007 pay-ments/case	Average FY 2008 pay-ments/case	Change
<b>By Geographic Location:</b>				
All hospitals .....	3,534	748	752	0.6
Large urban areas (populations over 1 million) .....	1,406	830	829	0.0
Other urban areas (populations of 1 million of fewer) .....	1,133	737	748	1.5
Rural areas .....	995	520	521	0.3
Urban hospitals .....	2,539	788	793	0.6
0–99 beds .....	630	619	621	0.4
100–199 beds .....	851	674	678	0.6
200–299 beds .....	480	744	748	0.5
300–499 beds .....	411	818	824	0.8
500 or more beds .....	167	983	990	0.7
Rural hospitals .....	995	520	521	0.3
0–49 beds .....	337	425	423	–0.5
50–99 beds .....	372	477	477	0.1
100–149 beds .....	173	517	519	0.5
150–199 beds .....	68	575	576	0.3
200 or more beds .....	45	649	654	0.7
<b>By Region:</b>				
Urban by Region .....	2,539	788	793	0.6
New England .....	122	838	836	–0.2
Middle Atlantic .....	350	862	857	–0.6
South Atlantic .....	390	747	756	1.1
East North Central .....	395	773	775	0.3
East South Central .....	166	711	714	0.4
West North Central .....	157	771	774	0.5
West South Central .....	355	737	744	1.0
Mountain .....	153	788	800	1.6
Pacific .....	398	899	916	1.9
Puerto Rico .....	53	345	345	0.1
Rural by Region .....	995	520	521	0.3
New England .....	23	711	709	–0.3
Middle Atlantic .....	72	529	532	0.5
South Atlantic .....	173	502	507	0.9
East North Central .....	122	550	549	–0.2
East South Central .....	177	481	480	–0.2
West North Central .....	115	549	552	0.5
West South Central .....	199	473	469	–0.8
Mountain .....	77	520	528	1.7
Pacific .....	37	627	642	2.4
<b>By Payment Classification:</b>				
All hospitals .....	3,534	748	752	0.6
Large urban areas (populations over 1 million) .....	1,425	828	828	0.0
Other urban areas (populations of 1 million of fewer) .....	1,153	736	747	1.5
Rural areas .....	956	520	522	0.2
<b>Teaching Status:</b>				
Non-teaching .....	2,480	632	636	0.7
Fewer than 100 Residents .....	815	761	764	0.4
100 or more Residents .....	239	1,076	1,083	0.6
<b>Urban DSH:</b>				
100 or more beds .....	1,512	812	820	0.9
Less than 100 beds .....	355	552	554	0.4
<b>Rural DSH:</b>				

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued  
[FY 2007 payments compared to FY 2008 payments]

	Number of hospitals	Average FY 2007 pay-ments/case	Average FY 2008 pay-ments/case	Change
Sole Community (SCH/EACH) .....	384	465	467	0.3
Referral Center (RRC/EACH) .....	203	573	576	0.5
Other Rural:				
100 or more beds .....	46	485	488	0.6
Less than 100 beds .....	175	431	429	-0.4
Urban teaching and DSH:				
Both teaching and DSH .....	807	888	895	0.7
Teaching and no DSH .....	186	798	792	-0.7
No teaching and DSH .....	1,060	667	675	1.1
No teaching and no DSH .....	525	697	699	0.3
Rural Hospital Types:				
Non special status hospitals .....	2,452	791	796	0.6
RRC/EACH .....	53	698	707	1.3
SCH/EACH .....	42	641	643	0.3
Medicare-dependent hospitals (MDH) .....	16	446	440	-1.3
SCH, RRC and EACH .....	15	746	764	2.3
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY2008 Reclassifications:				
All Urban Reclassified .....	393	786	790	0.5
All Urban Non-Reclassified .....	2,145	788	793	0.7
All Rural Reclassified .....	364	564	568	0.7
All Rural Non-Reclassified .....	569	455	453	-0.5
Other Reclassified Hospitals (Section 1886(d)(8)(B)) .....	63	516	517	0.3
Type of Ownership:				
Voluntary .....	2,064	765	768	0.3
Proprietary .....	823	681	689	1.3
Government .....	597	732	741	1.2
Medicare Utilization as a Percent of Inpatient Days:				
0-25 .....	230	979	991	1.3
25-50 .....	1,289	845	851	0.8
50-65 .....	1,451	664	667	0.4
Over 65 .....	440	597	595	-0.3

■ 31. On page 48173,  
■ a. First column,  
    (1) Second full paragraph,  
    (a) Line 14, the figure “3.5” is corrected to read “3.7”.

(b) Line 16, the figure “3.56” is corrected to read “3.69”.  
(c) Line 27, the figure “3.837” is corrected to read “3.97”.

■ b. Second column, in Table IV—Accounting Statement: Classification of Estimated Expenditures from FY 2007 to FY 2008, the table is corrected to read as follows:

TABLE IV.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FROM FY 2007 TO FY 2008

Category	Transfers
Annualized Monetized Transfers .....	\$3.970 Billion.
From Whom to Whom .....	Federal Government to IPPS Medicare Providers.
Total .....	3.970 Billion.

**IV. Waiver of Proposed Rulemaking and Delay in Effective Date**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public

interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

Therefore, for reasons noted below, we find good cause to waive proposed rulemaking and the 30 day delayed effective date for the technical corrections in this notice. This notice merely corrects typographical and technical errors in the preamble, regulations text, and addendum of the FY 2008 IPPS final rule with comment period and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this notice is intended to ensure that the FY 2008 IPPS final rule with comment period

accurately reflects the policies adopted in the final rule. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule or delaying the effective date of these

changes is unnecessary and contrary to the public interest.  
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 27, 2007.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 07-4875 Filed 9-28-07; 1:26 pm]

**BILLING CODE 4120-01-P**



# Federal Register

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Wednesday,  
October 10, 2007

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## Part III

# Department of the Interior

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Fish and Wildlife Service

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50 CFR Part 17

**Endangered and Threatened Wildlife and  
Plants; Designation of Critical Habitat for  
the Peninsular Bighorn Sheep (*Ovis  
canadensis nelsoni*) and Proposed  
Taxonomic Revision; Proposed Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AV09

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Peninsular Bighorn Sheep (*Ovis canadensis nelsoni*) and Proposed Taxonomic Revision****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to revise currently designated critical habitat for the Peninsular bighorn sheep (*Ovis canadensis nelsoni*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 384,410 acres (ac) (155,564 hectares (ha)) of land in Riverside, San Diego, and Imperial counties, California, fall within the boundaries of the proposed revised critical habitat designation. Of the area proposed as revised critical habitat, approximately 4,512 ac (1,826 ha) of land are Tribal; 93,720 ac (37,927 ha) are Federal; 249,840 ac (101,107 ha) are State; 35,824 ac (14,497 ha) are private; and 514 ac (208 ha) are local. We are proposing to exclude from the final designation, under section 4(b)(2) of the Act, approximately 4,512 ac (1,826 ha) of Agua Caliente Band of Cahuilla Indians Tribal land. We are also evaluating and considering the possible exclusion of approximately 19,211 ac (7,774 ha) of private land covered under the draft Coachella Valley Multiple Species Habitat Conservation Plan. Further, we are acknowledging a taxonomic change to the species and are proposing a taxonomic revision of the listed entity from distinct population segment (DPS) of species *Ovis canadensis*, to DPS of subspecies *Ovis canadensis nelsoni*.

**DATES:** We will accept comments from all interested parties until December 10, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 26, 2007.

**ADDRESSES:** If you wish to comment on this proposed rule, you may submit your comments and materials concerning by any one of several methods:

1. *By mail or hand-delivery to:* Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

2. *By electronic mail (e-mail) to:* fw8cfwocomments@fws.gov. Please see the Public Comments Solicited section below for other information about electronic filing.

3. *By fax to:* the attention of Jim Bartel at 760-431-5901.

4. *Via the Federal eRulemaking Portal at:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760-431-9440 ; facsimile 760-431-5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Public Comments**

We intend that any final action resulting from this proposal to revise the current critical habitat designation for the Peninsular bighorn sheep will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the subspecies from human activity, the degree of which can be expected to increase due to the designation, that outweigh the benefit of designation, such that the designation of critical habitat is not prudent, and whether there are areas we previously designated, but are not proposing for revised designation here, that should be designated as critical habitat;

(2) Specific information on the amount and distribution of Peninsular bighorn sheep habitat, what areas occupied at the time of listing and that contain features essential for the conservation of the subspecies we should include in the designation and why, and what areas not occupied at the time of listing are essential for the conservation of the subspecies and why;

(3) The appropriateness of the proposed exclusion of approximately 4,512 ac (1,826 ha) of Peninsular bighorn sheep habitat from the final designation in consideration of Secretarial Order 3206, "American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive

Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2) (see "Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act" for a detailed discussion); specifically any additional information regarding the benefits of including these Tribal lands in the designation or of excluding these lands from the designation;

(4) The appropriateness of the possible exclusion of approximately 19,211 acres (ac) (7,774 hectares (ha)) of Peninsular bighorn sheep habitat from the final designation based on the benefits to the conservation of the subspecies and its PCEs provided by the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP) (see "Areas Considered for Exclusion Under Section 4(b)(2) of the Act" for a detailed discussion), specifically any additional information on the benefits of including land covered by the draft Coachella Valley Multiple Species Habitat Conservation Plan in the designation or of excluding these lands from the designation. At this time we are only considering private lands under the draft Coachella Valley MSHCP for exclusion and soliciting comment on the appropriateness of excluding California Department of Fish and Game, and Bureau of Land Management lands as Memorandum of Understanding partners to the MSHCP;

(5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat;

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; and

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposal by one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include "Attn: Peninsular bighorn sheep" in your e-mail subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our Carlsbad Fish and Wildlife Office at 760-431-9440. Please note that we must

receive comments by the date specified in the **DATES** section in order to consider them in our final determination.

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 may 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 and materials we receive, as well as supporting documentation we used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760-431-9440).

### Background

In this proposed rule, it is our intent to discuss only those topics directly relevant to the revision of designated critical habitat for the Peninsular bighorn sheep and the proposed taxonomic revision of the current listed entity. For more information on the biology, and ecology of the Peninsular bighorn sheep, refer to the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), and the proposed and final critical habitat rules published in the **Federal Register** on July 5, 2000, and February 1, 2001, respectively (65 FR 41405 and 66 FR 8650).

In the 1998 final listing rule, Peninsular bighorn sheep were listed as a distinct population segment (DPS) of the species *Ovis canadensis*. As stated in the 2001 critical habitat rule, based on morphometric and genetic analysis, Wehausen and Ramey (1993, p. 9) synonymized Peninsular bighorn sheep with the subspecies *nelsoni*, which is the current taxonomy. Although we accepted this taxonomy at the time of the designation in 2001, we have yet to formally revise the taxonomy of the listed entity. Therefore, we are formally proposing a taxonomic revision to amend the final listing rule from a DPS of the species *Ovis canadensis*, to a DPS of the subspecies *Ovis canadensis nelsoni*. Therefore, within this proposed critical habitat rule we will refer to the listed entity as a subspecies and not a species. The taxonomic revision does not materially affect discreteness and significance of the Peninsular bighorn sheep as a DPS entity. As stated in the final listing rule (63 FR 13134), regardless of taxonomic issues

surrounding this species at the time of listing, the biological evidence supports recognition of Peninsular bighorn sheep as a distinct vertebrate population segment in the Service's Recognition of Distinct Vertebrate Population Segments (DPS) (61 FR 4722). For a detailed discussion of the DPS analysis for Peninsular bighorn sheep, see the Distinct Vertebrate Population Segment section of the final listing rule.

Peninsular bighorn sheep (a large mammal in the family Bovidae) occupying the Peninsular Ranges of southern California were determined, at the time of listing in 1998, to be a distinct vertebrate population segment (DPS) of bighorn sheep based on their geographic isolation and separation from other desert bighorn sheep (63 FR 13134; March 18, 1998). Peninsular bighorn sheep occur on moderate to steep (greater than 20 percent) (NRCS 1993, p. 66) open slopes, canyons, and washes in hot and dry desert regions of the Peninsular Ranges of southern California in Riverside, San Diego, and Imperial counties (66 FR 8650; February 1, 2001). Peninsular bighorn sheep use several different habitat types, elevations, and slopes depending on seasonal environmental conditions and/or their life history stage. The 2001 final critical habitat rule (66 FR 8650) stated that most Peninsular bighorn sheep live between 300 and 4,000 feet (ft) (91 and 1,219 meters (m)) in elevation. Upon review of available literature, we now believe 4,600 ft (1,400 m) (below forested vegetation) is a more widely accepted upper elevational limit in the Peninsular Ranges (Jorgensen and Turner 1975, p. 51; DeForge *et al.* 1997, p. 11; Rubin *et al.* 1998, p. 541; Ernest *et al.* 2002, p. 76). Desert bighorn sheep are frequently found on slopes greater than 20 percent (Elenowitz 1983, p. 87; Andrew and Bleich 1999, p. 13; Dunn 1996, p. 5), and our Geographic Information System (GIS) records and occurrence data confirm this observation for Peninsular bighorn sheep. Steep terrains with slopes of 60 percent or greater used for predator evasion and lambing are a crucial component of Peninsular bighorn sheep habitat (Dunn 1996, p. 1; Service 2000, p. 6). Peninsular bighorn sheep will use caves and rock outcrops for shelter during inclement weather and for shade during summer months. Bighorn sheep are primarily diurnal (Krausman *et al.* 1985, p. 25), but Peninsular bighorn sheep may be active at any time of day or night (Miller *et al.* 1984, p. 24). A wide range of forage resources and vegetation associations are required by this subspecies to meet annual and

drought-related variations in forage quality and availability. In a study of Peninsular bighorn sheep, Scott (1986, p. 21) found that diets were dominated by shrub species, while grasses and forbs species made up a smaller portion of the Peninsular bighorn sheep's diet depending on the season. Valley floors, rolling hills, and alluvial fans and washes with productive soils provide seasonal vegetation and water resources important to the Peninsular bighorn sheep, especially for ewes during the reproductive season (Service 2000, p. 8). Please see the "Primary Constituent Elements" section of this proposed rule for a detailed discussion of the habitat requirements of this subspecies.

At the time of listing (1998), Peninsular bighorn sheep were known to occupy habitat along the Peninsular Mountain Ranges from the San Jacinto Mountains of southern California into the Volcan Tres Virgenes Mountains in Baja California, Mexico (63 FR 13134; March 18, 1998). Population estimates at the time indicated approximately 280 Peninsular bighorn sheep existed within the United States, divided amongst approximately 8 subpopulations or ewe groups (63 FR 13134; March 18, 1998). At the time of the final critical habitat designation in 2001, a range-wide census estimated approximately 400 Peninsular bighorn sheep existed within the United States (Torres 2000, p. 1). We have extensive occurrence data documenting bighorn sheep within the entire range identified in the listing rule. Population estimates for 2006, derived from data collected by the Bighorn Institute, California Department of Fish and Game (CDFG), and Anza Borrego Desert State Park, indicate approximately 793 adult and yearling Peninsular bighorn sheep exist within the United States (Torres 2007). Population estimates for various regions within the Peninsular Ranges in 2006 are as follows: San Jacinto Mountains, 21; North Santa Rosa Mountains, 49; Central Santa Rosa Mountains, 163; South Santa Rosa Mountains, 179; Coyote Canyon, 42; North San Ysidro Mountains, 79; South San Ysidro Mountains, 38; Vallecito and Fish Creek Mountains, 77; and Carrizo Canyon, 145 (Torres 2007).

A captive breeding program has been maintained by the Bighorn Institute since 1984 in cooperation with CDFG, the Bureau of Land Management (BLM), and the Service (Ostermann *et al.* 2001, p. 751). Originally instituted to conduct disease research on low lamb survival, the captive breeding program was formalized in 1995, with the goals of safeguarding a sample of the Peninsular bighorn sheep gene pool and

augmenting and reestablishing wild populations (Ostermann *et al.* 2001, p. 751). Captive-bred Peninsular bighorn sheep have been released in the northern Santa Rosa Mountains and the San Jacinto Mountains (Ostermann *et al.* 2001, p. 751), areas historically occupied by the subspecies.

Within the Peninsular Ranges, habitat is patchy, and the sheep populations are naturally fragmented (Bleich *et al.* 1990, p. 386; Rubin *et al.* 1998, p. 547). Male and female bighorn sheep remain loosely segregated much of the year and come together during the breeding period or rut (Bleich *et al.* 1997, p. 7). In the Peninsular Ranges, the rut occurs in the late summer and fall months (Service 2000, p. 15), peaking from August to October (Rubin *et al.* 2000, p. 774). As parturition (giving birth) approaches, ewes seek isolated sites (escape terrain) with shelter and unobstructed views (Turner and Hansen 1980, p. 148), seclude themselves from other females, and find sites to give birth (Geist 1971, p. 239; Etchberger and Krausman 1999, p. 358). Ewes usually give birth to one lamb after an approximately 6-month gestation period (Geist 1971, p. 239; Turner and Hansen 1980, p. 146). During the period of sexual segregation, ewes and their lambs are typically found in steeper, more secure habitat, while rams inhabit less steep or less rugged terrain (Geist 1971, p. 239; Bleich *et al.* 1997, p. 23).

#### Previous Federal Actions

On February 1, 2001, we designated approximately 844,897 ac (341,919 ha) of land in Riverside, San Diego, and Imperial counties, California, as critical habitat. The designation followed the Service's release of the final Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (dated October 25, 2000). On March 7, 2005, the Agua Caliente Band of Cahuilla Indians filed a complaint against the Service alleging that the economic analysis developed for our 2001 designation used a methodology similar to that ruled to be insufficient by the Tenth Circuit Court in *New Mexico Cattle Growers Association v. U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001). Other parties subsequently intervened as plaintiffs in the case. A July 31, 2006, court-approved consent decree enacted a limited partial vacatur of Tribal, mining, and Desert Riders lands (29,925 ac (12,110 ha)) and remanded the critical habitat designation back to the Service for new rulemaking. Publication of this proposed revision of critical habitat satisfies our obligation under the consent decree to submit a revised

proposed rule to the **Federal Register** on or before September 30, 2007. The final rule is due to the **Federal Register** on or before September 30, 2008. For more information on previous Federal actions concerning the Peninsular bighorn sheep, refer to the final listing rule published in the **Federal Register** on March 18, 1998 (63 FR 13134), and the designation of critical habitat for the Peninsular bighorn sheep published in the **Federal Register** on February 1, 2001 (66 FR 8650).

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) That may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of Section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid

destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if its essential features may require special management considerations or protection.

Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that

designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

## Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas occupied at the time of listing that contain the features essential to the conservation of the Peninsular bighorn sheep, and areas unoccupied at the time of listing that are essential to the conservation of the Peninsular bighorn sheep, or both. Material reviewed included information from the final listing rule (63 FR 13134; March 18, 1998) and final critical habitat rule (66 FR 8650; February 1, 2001), information and survey observations published in peer-reviewed literature and provided in academic theses and agency reports; location data and survey information provided in agency status and monitoring reports and on GIS maps; habitat analysis and other information provided in the Peninsular bighorn sheep recovery plan (Service 2000); material submitted during section 7 consultations; data made available through members of the Peninsular Bighorn Sheep Recovery Team, Coachella Valley Multiple Species Habitat Conservation Plan program, and Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan program; and regional GIS coverages.

We are not proposing any areas outside the geographical area presently occupied by the Peninsular bighorn sheep as revised critical habitat because presently occupied areas are sufficient for the conservation of the subspecies.

## Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied at the time of listing to propose as critical habitat, we consider the primary constituent elements (PCEs) to be those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We derive the specific primary constituent elements (PCEs) required for the Peninsular bighorn sheep from its biological needs.

### *Space for Individual and Population Growth and for Normal Behavior*

Peninsular bighorn sheep occur on moderately steep to very steep open slopes, canyons, and washes in hot and dry desert regions where the land is rough and rocky, and sparsely vegetated (66 FR 8650; February 1, 2001). This subspecies is primarily restricted to the east-facing lower elevation slopes (generally below 4,600 ft (1,400 m)) of the Peninsular Ranges along the northwestern edge of the Sonoran Desert (Jorgensen and Turner 1975, p. 51; DeForge *et al.* 1997, p. 11; Rubin *et al.* 1998, p. 541; Ernest *et al.* 2002, p. 76). A wide range of topography provides a diversity of habitats and plant communities across the mountainous slopes, canyons, washes, and alluvial fans within the home range of the Peninsular bighorn sheep (Service 2000, p. 156). This diverse topography is necessary to provide shelter from the elements and predators, areas for rearing, areas used to meet thermal requirements, seasonal water and forage sources, and space for mating and movement of this subspecies.

Diverse topographic features are especially important because of the extreme temperatures Peninsular bighorn sheep must cope with in this desert region. During hot weather, desert bighorn sheep seek shade under boulders and cliffs, or move to north-facing slopes (Merritt 1974, p. 14; Andrew 1994, p. 52). In the event of inclement weather they may seek protected caves or overhangs, or move to sunny, south-facing slopes (Andrew 1994, p. 52), or slopes that are protected from strong winds. According to GIS data and occurrence records, Peninsular bighorn sheep largely utilize habitat with 20 to 60 percent slopes, broken by canyons and washes. The preference for slopes greater than 20 percent has been shown in other populations of desert sheep as well (Andrew 1994, p. 53). Nighttime bedding areas are chosen carefully according to the topography of the habitat and may be considered a limiting factor in bighorn sheep distribution (Hansen 1980, p. 78). These bedding areas are usually located along ridges and spurs with long distance visibility where bighorn sheep can escape if necessary in a matter of seconds (Hansen 1980, p. 78).

Generally, bighorn sheep primarily rely on their sense of sight to detect predators. They prefer the lower elevations of the Peninsular Ranges where the vegetation associations are less dense and provide better visibility than those at higher elevations. Research has shown that bighorn sheep will avoid habitat in which dense vegetation reduces visibility and regularly use habitat with vegetative canopy cover less than or equal to 30 percent (Risenhoover and Bailey 1985, p. 799; Etchberger *et al.* 1989, p. 906; Dunn 1996, p. 1). Bighorn sheep in the Peninsular Ranges avoid higher elevations (above 4,600 ft (1,400 m)), likely due to decreased visibility (and therefore increased predation risk) associated with the denser vegetation (chaparral and conifer woodland) found at higher elevations (Service 2000, p. 10).

Along with occupying open habitat, bighorn sheep also use very steep, precipitous terrain for predator evasion (Service 2000, p. 6). Bighorn sheep use their climbing abilities rather than speed to escape from predators, and mountainous slopes of greater than or equal to 60 percent (escape habitat) are steep enough to provide this function (Andrew 1994, p. 57; Dunn 1996, p. 1; McKinney *et al.* 2003, p. 1231; Service 2000, p. 6). Very steep escape habitat is also used for lambing (Service 2000, p. 6). As parturition approaches, ewes seek isolated sites (escape terrain with slopes

60 percent or greater) with shelter and unobstructed views (Turner and Hansen 1980, p. 148), and seclude themselves from other females while finding sites to give birth (Geist 1971, p. 239; Etchberger and Krausman 1999, p. 358). Ewes usually give birth to one lamb born after an approximately 6-month gestation period (Geist 1971, p. 239; Turner and Hansen 1980, p. 146). These areas of steep and very steep terrain are vital to Peninsular bighorn sheep because lambs have increased vulnerability to predation, and these protective slopes are rarely visited by predators (Geist 1971, p. 239). Ewe groups with lambs usually stay close to escape terrain, while feeding on lower gradient slopes. Berger (1991, p. 72) reported that when feeding on bajadas (compound alluvial fans) or away from escape terrain, ewes and lambs were more than three times more vulnerable to predation. Predators of Peninsular bighorn sheep include mountain lion, bobcat, and coyote (Hayes *et al.* 2000, p. 954; 66 FR 8650).

#### Metapopulation Structure

Within desert mountain ranges like the Peninsular Ranges, bighorn sheep habitat is patchy, and the population structure is naturally fragmented (Bleich *et al.* 1990, p. 384). This fragmentation has led to the application of a broad landscape approach to their population ecology, grouping geographically distinct herds into metapopulations, which are networks of interacting ewe groups or subpopulations (Schwartz *et al.* 1986, pp. 182–183; Bleich *et al.* 1990, p. 386). This approach considers long-term viability not of individual subpopulations, but rather of entire metapopulations; thus both genetic and demographic factors are considered. Decreasing population sizes can lead to decreasing levels of heterozygosity that may have negative demographic effects through inbreeding depression (Lande 1988, p. 1,456) and loss of adaptability. A small amount of genetic exchange among herds by movements of males can counteract inbreeding and associated increases in homozygosity that might otherwise develop within small, isolated populations (Schwartz *et al.* 1986, p. 185). Males have larger home ranges and have a much greater tendency than females to explore new areas, which they may do in search of females during the mating season. If geographic distances between female groups within metapopulations are not extreme (greater than 31 miles (mi) 50 kilometers (km) (Witham and Smith 1979, p. 24)), and no insurmountable barriers exist, movement by males occurs readily. If movement is precluded by human-constructed

obstacles, populations will become isolated and the metapopulation structure dismantled.

A study of Peninsular bighorn sheep distribution and abundance by Rubin *et al.* (1998, p. 545) concluded that ewes exhibit a fragmented distribution within the Peninsular Ranges making up at least eight ewe groups or subpopulations. It is suggested that although the distribution of these ewe groups could be considered naturally fragmented, construction and use of roads through bighorn sheep habitat may have increased fragmentation within the Peninsular Ranges because ewes avoided crossing highways (Rubin *et al.* 1998, p. 547). Ewes show strong gregarious and philopatric behavior (faithful to natal home range), which limits their dispersal abilities (Boyce *et al.* 1999, p. 99; Service 2000, p. 10). Movement of ewes between ewe groups appears infrequent, but direct observation and aerial-telemetry locations and genetic analysis revealed ram movement between up to three ewe groups (Boyce *et al.* 1999, p. 99; Rubin *et al.* 1998, pp. 543–544). Substructuring also can occur within single herds (ewe groups) of bighorn sheep (Festa-Bianchet 1986, pp. 327–330; Andrew *et al.* 1997, pp. 74–75; Rubin *et al.* 1998, pp. 543–548). Such substructuring is defined by separate home range patterns. Although demonstrated more with females, it can occur in both sexes.

Another important long-term process in metapopulation dynamics is the balance between rates of natural extinction and colonization among subpopulations. Colonization rates must exceed extinction rates for a metapopulation to persist (Hanski and Gilpin 1991, pp. 8–9). In recent history this balance has not occurred for Peninsular bighorn sheep due to fragmentation, disease, predation, and low recruitment (Rubin *et al.* 1998, pp. 545–547; Rubin *et al.* 2002, p. 803–805). In addition to fragmentation, remaining subpopulations consist of small, isolated groups of bighorn sheep. Small groups are more vulnerable to extirpation due to random naturally occurring events, disease, or predation because of their small population size. Local extinction of small subpopulations can be prevented by occasional immigrants from neighboring subpopulations (rescue effect) (Brown and Kodric-Brown 1977, p. 445).

Because of the metapopulation structure of the Peninsular bighorn sheep population, it is important for genetic exchange and the conservation of the subspecies to ensure space for movement and connectivity between

ewe groups. Furthermore, maintaining connectivity within the metapopulation will help safeguard against local extinctions of the remaining subpopulations.

#### Food

A wide range of forage resources and vegetation associations are required by Peninsular bighorn sheep to meet annual and drought-related variations in forage quality and availability (Hansen 1980, p. 76). Valley floors, rolling hills, and alluvial fans and washes with productive soils provide seasonal vegetation and water resources important to the Peninsular bighorn sheep. In a mountainous environment like the Peninsular Ranges, temperature and soil moisture vary widely with slope and elevation. This causes variation in plant growth throughout this subspecies' habitat on a seasonal basis. Peninsular bighorn sheep need to have access to the seasonal abundance of plant life at various elevations to maximize resources and survive in the desert environment. Berger (1991, p. 70) found that bighorn sheep adjusted their feeding ranges to exploit more nutritive portions of their home ranges, such as bajadas, early in the season when high protein grasses were emerging. Due to the high energetic costs of pregnancy and lactation, ewes are especially dependent on areas with nutritious forage to increase success of rearing offspring (Service 2000, p. 8). Berbach (1987, p. 97) reported that when ewes were confined to an enclosure and prevented from using all vegetation associations during late gestation and early lactation, they and their lambs died of malnutrition. During the reproductive season for Peninsular bighorn sheep, ewe foraging is typically concentrated on specific sites, such as alluvial fans, bajadas, and washes, where more productive, wetter soils support greater herbaceous growth than steeper, drier, rockier soils (Service 2000, p. 8). There is a tendency for plants that dry out during summer months on the mountain sides to remain green longer (and thus more nutritious, higher in protein, and more easily digested) because groundwater is generally closer to the surface and in greater quantity. Furthermore, the greater soil moisture supports a suite of nutritious plants that do not grow on the dry mountain sides. Therefore, washes and alluvial fans play an important role in allowing desert bighorn sheep to acquire quality forage during the heat of summer months and through times of drought.

In a study of Peninsular bighorn sheep, Scott (1986, p. 21) found that

diets were dominated by shrub species (64 to 76 percent), with grasses and forbs species making up a smaller portion of the diet (19 to 30 percent and 2 to 6 percent, respectively). In the following section, plant nomenclature has been updated to conform to treatments in Hickman (1993). Common names generally conform with those given in Hickman (1993) and/or Abrams *et al.* (1992–1960). Cited scientific names are retained in brackets for ease of reference. Foraging studies by Scott (1986, p. 21) and Cunningham (1982, p. 31) noted that Peninsular bighorn sheep preferentially feed on different plants seasonally. Shrubs such as *Ambrosia dumosa* (burro bush), *Caesalpinia virgata* [*Hoffmannseggia microphylla*] (small-leaved Hoffmannseggia), *Hyptis emoryi* (desert lavender), *Sphaeralcea* spp. (globemallow), and *Simmondsia chinensis* (joboba) are a primary food source year round; grasses such as *Aristida adscensionis* (sixweeks threewain) and *Bromus rubens* (red brome) along with cacti *Opuntia* spp. (cholla) are a primary food source in the fall; forbs such as *Plantago* spp. (woolly plantain), *Plantago ovata* [*insularis*] var. *fastigiata* (woolly plantain), and *Ditaxis neomexicana* (common ditaxis) are a primary food source in the spring. However, Peninsular bighorn sheep are generalist foragers, and will browse on a wide variety of plant species depending on seasonal availability. Other plants reportedly consumed by Peninsular bighorn sheep include *Ephedra* spp. (Mormon tea), *Agave deserti* (desert agave), *Quercus* spp. (scrub oak), *Phoradendron californicum* (desert mistletoe), *Eriogonum fasciculatum* (California buckwheat), *Prunus fremontii* (desert apricot), *Acacia greggii* (catclaw), *Prosopis juliflora* (mesquite), *Krameria grayi* (ratany), and *Malosma laurina* (laurel-leaf sumac) (Browning and Monson 1980, p. 88).

#### Water

In the Peninsular Ranges, the presence of perennial water is known to be a limiting factor only during prolonged droughts or summers without significant thunderstorm activity (Service 2000, p. 156). Water sources are most valuable to bighorn sheep if they occur in proximity to escape terrain with good visibility (Service 2000, p. 9). However, bighorn sheep have been observed to travel at least 10 mi (16 km) from sources of perennial water. According to Service biologists familiar with the subspecies, bighorn sheep usually visit a water source every 2 to 3 days, but it is not unusual for them to drink more often. During the hot

summer months, desert bighorn sheep typically stay close to reliable sources of water and drink large quantities of water at a time. It has been hypothesized that desert bighorn sheep can survive without a permanent water source, although this view is not widely accepted (Turner and Weaver 1980, p. 104). In desert ranges like the Peninsular Ranges, rainwater can collect in natural collection tanks and potholes in the rock and provide seasonal or perennial water sources. Natural springs also provide a reliable source of water for Peninsular bighorn sheep. Desert sheep also rely on consuming vegetation, including cacti, to meet water requirements when standing water sources are scarce (Turner and Weaver 1980, p. 102). Water is especially important to lactating ewes, as they need sufficient water to produce milk. Water sources contribute greatly to the Peninsular bighorn sheep's ability to survive the hot and dry summer months.

#### Primary Constituent Elements for the Peninsular Bighorn Sheep

Within the geographical area occupied by the Peninsular bighorn sheep at the time of listing, we must identify the PCEs that may require special management considerations or protection.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the subspecies, we have determined that the Peninsular bighorn sheep's PCEs are:

(1) Moderate to steep, open slopes (20 to 60 percent) and canyons, with canopy cover of 30 percent or less (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide space for sheltering, predator detection, rearing of young, foraging and watering, mating, and movement within and between ewe groups.

(2) Presence of a variety of forage plants, indicated by the presence of shrubs (e.g., *Ambrosia* spp., *Caesalpinia* spp., *Hyptis* spp., *Sphaeralcea* spp., *Simmondsia* spp.), that provide a primary food source year round, grasses (e.g., *Aristida* spp., *Bromus* spp.) and cacti (e.g., *Opuntia* spp.) that provide a source of forage in the fall, and forbs (e.g., *Plantago* spp., *Ditaxis* spp.) that provide a source of forage in the spring.

(3) Steep, rugged, slopes (60 percent slope or greater) (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide secluded space for lambing as well as terrain for predator evasion.

(4) Alluvial fans, washes, and valley bottoms that provide important foraging areas where nutritious and digestible

plants can be more readily found during times of drought and lactation and that provide and maintain habitat connectivity by serving as travel routes between and within ewe groups, adjacent mountain ranges, and important resources areas, such as foraging areas and escape terrain.

(5) Intermittent and permanent water sources that are available during extended dry periods and that provide relatively nutritious plants and drinking water.

This proposed revision to currently designated critical habitat for the Peninsular bighorn sheep is designed for the conservation of PCEs necessary to support the life history functions that are the basis for our proposal and the areas containing those PCEs.

We propose units for designation based on sufficient PCEs being present to support at least one of the subspecies' life history functions. For this subspecies, all of the units proposed contain all of the PCEs and support the multiple essential life history functions identified above.

#### Special Management Considerations or Protection

When designating critical habitat, we assess whether the occupied areas contain the features that are essential to the conservation of the subspecies and that may require special management considerations or protection. We have also considered how revising the current critical habitat designation for the Peninsular bighorn sheep highlights habitat that needs special management considerations or protection.

Peninsular bighorn sheep habitat and the PCEs upon which the sheep depends are threatened by the direct and indirect effects of: Development and expansion of urban areas; human disturbance related to recreation; construction of roadways and power lines; and mineral extraction and mining operations.

The development and expansion of urban and associated industrial areas threaten Peninsular bighorn sheep and their habitat through direct and indirect effects. Habitat loss (especially in canyon bottoms), degradation, and fragmentation associated with the proliferation of residential and commercial development, roads and highways, water projects, and vehicular and pedestrian recreational uses threaten the Peninsular bighorn sheep throughout its range (63 FR 13134; March 18, 1998). The cities that occur along the eastern boundary of proposed revised critical habitat, from the base of the San Jacinto and Santa Rosa Mountains to the Salton Sea area (Units

1 and 2A), continue to grow. Development adjacent to and within Peninsular bighorn sheep habitat affects the quality and quantity of lower elevation habitat and associated vegetation, alluvial fans, and water sources (PCEs 1, 2, 4, and 5). By 2000, at least 18,500 ac (7,490 ha) of suitable Peninsular bighorn sheep habitat had been lost to urbanization and agriculture along the urban interface between the cities of Palm Springs and La Quinta (Service 2000, p. 38). Much of the lost habitat consisted of low elevation alluvial fans and washes that provided important sources of nutrients to ewes when they are rearing their lambs (PCE 2 and 4) (66 FR 8650; February 1, 2001). Moreover, in the northern Santa Rosa Mountains, from 1991 to 1996, 34 percent of adult mortalities appear to have been directly caused by urbanization (66 FR 8650; February 1, 2001). Five Peninsular bighorn sheep were killed by cars; five died from feeding on toxic, nonnative ornamental plants; and one was strangled in a wire fence (DeForge and Ostermann 1997, p. 1).

Continued urban and commercial development within the range of Peninsular bighorn sheep could fragment the Peninsular bighorn sheep metapopulation into isolated groups too small to maintain long-term viability. Maintenance of genetic diversity allows small ewe groups like those in the Peninsular Ranges to persist. The inability of rams and occasional ewes to move between groups erodes the genetic fitness of isolated groups (PCE 1 and 4) (63 FR 13134; March 18, 1998). Special management considerations or protection may be needed to alleviate the effects of development on Peninsular bighorn sheep habitat, especially lower elevation habitat, alluvial fans, and areas of possible ewe group connectivity near urban areas. This protection could be accomplished by controlling the expansion of urban, industrial, and agricultural development into these areas.

In the Peninsular Ranges (Units 1, 2 and 3), increased activity and disturbance adjacent to, and within Peninsular bighorn sheep habitat are adversely affecting bighorn sheep by altering their normal behavior. This altered behavior can lead to abandonment of habitat and prevent use of preferred habitat, including lambing areas, water sources, and foraging areas, and cause negative physiological effects (PCE 1, 2, 3, 4, and 5) (66 FR 8650; 63 FR 13134). A variety of human activities, such as hiking, mountain biking, horseback riding, camping, hunting, livestock grazing, and use of

aircraft and off-road vehicles, have the potential to disrupt normal bighorn sheep social behaviors. Special management considerations or protection may be needed to alleviate the effects of human activity and disturbance to Peninsular bighorn sheep. Restricting human use of trail systems and natural areas during lambing season and exclusionary fencing around urban areas may reduce human effects on Peninsular bighorn sheep behavior.

Roadways and power line structures occur in, and are proposed for construction within, Peninsular bighorn sheep habitat. Two major highways run through the Peninsular Ranges and fragment bighorn sheep habitat. In the northern portion of the Peninsular Ranges, State Route 74 runs through the Santa Rosa Mountains (Unit 2A). Further south, State Route 78 cuts through habitat between the San Ysidro Mountains and Pinyon Mountains (Unit 2B). These roadways have degraded habitat and have generally impeded the movement of Peninsular bighorn sheep (especially ewes) between ewe groups in the surrounding areas (PCE 1, 2, 3, 4, and 5) (Rubin *et al.* 1998, p. 547), which can erode the genetic fitness of isolated groups (63 FR 13134; March 18, 1998). However, some movement has been documented across State Route 74 (Service 2004, pp. 1–2). Epps *et al.* (2005, p. 1035) showed that nuclear genetic diversity of desert bighorn sheep populations was negatively correlated with the presence of human-made barriers (highways), which essentially eliminated dispersal. Furthermore, in some portions of their range, collisions with automobiles can be a significant cause of Peninsular bighorn sheep mortality (DeForge and Ostermann 1997, p. 1). The construction of power lines and associated structures may also degrade and fragment bighorn sheep habitat. Currently, a large power line (Sunrise Powerlink) is proposed for construction through Unit 2B along Highway 78. Special management considerations or protection may be needed to alleviate the effects of roadway and power line structures on Peninsular bighorn sheep and their habitat. Future construction of roadways and power lines should be avoided, and if unavoidable, should be constructed in a way that minimizes effects to habitat and allows for continued connectivity among ewe groups.

Mining operations occur within southern portions of the habitat used by Peninsular bighorn sheep. Mining activities and associated facilities threaten Peninsular bighorn sheep by causing the loss of vegetation structure

required for foraging activities and destroying habitats used for escape, bedding, lambing, or connectivity between ranges (PCE 1, 2, 3, 4, and 5). Disturbance could modify the sheep's behavior or cause bighorn sheep to flee an area. Mining occurs within the habitat of Peninsular bighorn sheep in Units 2B and 3. Special management considerations or protection may be needed to alleviate the effects of mining operations on Peninsular bighorn sheep habitat. Further mining operations should avoid to the maximum extent possible, areas considered essential to Peninsular bighorn sheep conservation.

#### Criteria Used To Identify Critical Habitat

All proposed revised critical habitat units are within areas that we have determined were occupied at the time of listing, and that contain sufficient PCEs to support the life history functions essential for the conservation of the subspecies. Lands were proposed for designation based on sufficient PCEs being present to support the life processes.

We used the following data to delineate proposed revised critical habitat: (1) Areas known to be occupied at the time of listing (1998) and currently occupied; (2) areas within the ewe group distribution (subpopulations) boundaries identified by Rubin *et al.* (1998); (3) areas where occupancy data points indicate repeated Peninsular bighorn sheep use, but which were not captured within the ewe groups distribution boundaries identified by Rubin *et al.* (1998); and (4) areas that contain the PCEs required by the subspecies as determined from aerial imagery and GIS data on vegetation, elevation, and slope.

We also gathered information from our files, staff biologists, the California Department of Fish and Game, the Bighorn Institute, and Dr. Ester Rubin. Our proposed revision to critical habitat is designed to capture ewe groups; lambing areas; foraging areas, including alluvial fans; water sources; ram groups; and areas used for associated herd (male, female, and young) movements and migrations.

We delineated the proposed revised critical habitat boundaries using the following steps:

(1) As a first step in the delineation process, we mapped ewe group areas from Rubin *et al.* (1998) over GIS imagery of the Peninsular Ranges to delineate the distribution of ewe groups in the proposed revised critical habitat. We consider Rubin *et al.* (1998) to be the best available data on Peninsular bighorn sheep ewe group distribution.

Rubin *et al.* (1998) examined the population structure, distribution, and abundance of Peninsular bighorn sheep in California using observational data from radio-collared and uncollared male (ram) and female (ewe) sheep between 1971 and 1996. This is the only data we are aware of that identifies the distribution of ewe groups and subgroups within the Peninsular Ranges.

(2) To ensure that Rubin *et al.* (1998, pp. 539–561) still accurately represents the boundaries of the ewe groups and to capture possible ram movement, we compared the ewe group delineation from Rubin *et al.* (1998, pp. 539–561) with all occupancy data collected since the time of listing on GIS imagery maps. We then expanded the ewe group delineation to include areas where occupancy data points indicate repeated Peninsular bighorn sheep use and recent sheep movements (post Rubin *et al.* 1998, pp. 539–561), and areas that contain the PCEs for Peninsular bighorn sheep. In particular, we expanded the northernmost ewe group delineation (San Jacinto Mountains) to include the area north of Chino Canyon where (1) we have evidence of recent ewe and ram movements and (2) the Bighorn Institute has released, and continues to release, captive-born sheep to help recover this subspecies. We also expanded the southernmost ewe group delineation (Carizzo Canyon area) to the south to capture water sources (PCE 5), including habitat near the Interstate 8-State Route 98 split, where there are consistent, recent sightings of uncollared Peninsular bighorn sheep.

(3) We then examined all pre-listing occurrence data in our files to determine if our revised critical habitat missed any areas of historical repeated Peninsular bighorn sheep use. We identified an area of historical repeated use that was occupied at the time of listing between two ewe subgroups documented in Rubin *et al.* (1998, pp. 539–561) as (1) Santa Rosa Mountains east of State Route 74 (Martinez Canyon) and (2) Santa Rosa Mountains east of State Route 74 (south). Use of this area is consistent with the Rubin *et al.* (1998, pp. 539–561) demographic study, which indicated possible connectivity between these subgroups through this area. This area is important in light of genetic findings by Boyce *et al.* (1999, pp. 99–106) that indicate ewe groups within these ranges maintain genetic connectivity, probably through male-mediated nuclear gene flow. Based on the importance of this area for connectivity between subgroups, we expanded the proposed revised critical habitat boundaries to include areas

where occupancy data points indicate historically occupied habitat. Since the number of occurrence data points in historically occupied areas is relatively small, we delineated the unit boundaries in these areas to follow the boundaries of the PCEs, such as elevations below 4,600 ft (1,400 m), areas with 30 percent canopy cover or less, escape terrain, alluvial fans, washes, and water sources immediately adjacent to the identified ewe groups.

(4) As a final step in refining our delineation, we closely examined our revised units to ensure they capture all of the PCEs to support life history functions essential for the conservation of the subspecies. Where appropriate, we expanded the boundaries to capture the extent of an alluvial fan or water source (PCE 4 or 5, respectively). We also removed areas that we determined do not contain the PCEs or otherwise do not contain suitable Peninsular bighorn sheep habitat, such as areas above 4,600 ft (1,400 m) elevation (PCE 1), areas containing conifer woodland with canopy cover greater than 30 percent (PCE 1), and slopes less than 20 percent (PCE 1), unless those areas overlapped specifically with Rubin *et al.*'s (1998, pp. 539–561) ewe group distributions and had documented use by Peninsular bighorn sheep.

On May 22, 2007, Drs. Esther Rubin and Walter Boyce, in cooperation with Steve Torres and Chris Stermer of the California Department of Fish and Game, submitted a draft predictive habitat model for bighorn sheep in the Peninsular Ranges. We did not adopt this predictive habitat model to delineate critical habitat because the model was submitted in draft form, prior to final steps of model validation and peer review, and model development was based on just two years of Global Positioning System (GPS) data (Rubin 2007, p. 2); nevertheless, the model supports our proposed delineation. Areas we are designating roughly fall within the upper level habitat suitability classes derived from the preliminary model.

When determining the proposed revisions to critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the Peninsular bighorn sheep. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this

proposed revision to critical habitat have been excluded by text in the proposed rule and are not proposed for designation as revised critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the subspecies or primary constituent elements in adjacent critical habitat.

#### Summary of Proposed Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision to the areas we designated as critical habitat for the Peninsular bighorn sheep on February 1, 2001 (66 FR 8650). The main differences include the following:

(1) The 2001 final rule used a generalized methodology for delineating critical habitat that resulted in the designation of one critical habitat unit for Peninsular bighorn sheep totaling 844,897 ac (341,919 ha) (66 FR 8650; February 1, 2001). This proposed revision is based on a more specific methodology that resulted in three critical habitat units including approximately 384,410 ac (155,564 ha) of land in Riverside, San Diego, and Imperial counties, California, a reduction of 460,487 ac (186,355 ha) from the 2001 final rule (66 FR 8650). The areas included in this proposed revised critical habitat are almost entirely within the boundaries of the existing (2001) critical habitat. There are approximately 72 ac (29 ha) of BLM land in Unit 3 that are outside the boundary of the 2001 critical habitat.

The reduction in total area from the 2001 final critical habitat designation is primarily the result of using a revised methodology to delineate critical habitat in this proposed revision. In our 2001 final critical habitat designation, we delineated critical habitat based on the methodology used in the Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (Service 2000).

In developing this proposed revision, we reexamined the methodology outlined in the 2000 recovery plan and the 2001 critical habitat designation, and updated that methodology based on the best available information to identify areas essential for the conservation of the subspecies (see “Criteria Used To Identify Critical Habitat” section). Since publication of the 2000 recovery plan and the 2001 critical habitat designation, more specific and up-to-date information has become available regarding habitat use by Peninsular bighorn sheep and areas containing the features essential to the conservation of this subspecies. New information indicates that many areas included in the 2001 critical habitat

designation do not support the features essential for the conservation of the Peninsular bighorn sheep and/or otherwise contain unsuitable habitat for the subspecies. For example, the 2001 final rule included high elevation (above 4,600 ft (1,402 m)), densely vegetated, and forested habitat that is inappropriate for sheep use in the San Jacinto, Santa Rosa, and Vallecito Mountains. The differences between the generalized methodology applied in the 2001 critical habitat designation and the methodology used in this proposed rule, including our reasons for revising the approach, are outlined below.

The recovery plan generally used two criteria, the presence of escape terrain and unobstructed view, as key habitat requirements when delineating the areas essential to Peninsular bighorn sheep with little consideration of the presence of the PCEs required by this subspecies. In this proposed revision, we have considered all five of the revised PCEs in delineating proposed revised critical habitat which results in a more precise determination of essential habitat (see "Primary Constituent Elements for the Peninsular Bighorn Sheep" and "Criteria Used to Identify Critical Habitat" sections).

Additionally, little consideration was given to occurrence data in the recovery plan methodology and specific ewe group distributions, resulting in expanses of critical habitat in the 2001 designation in which we have little to no occurrence records that would indicate sheep use those areas. For example, we have occupancy data dating back to 1940, yet extensive areas along the western and southern boundary of the 2001 designation contain little to no documented sheep use. In light of all the recent research efforts and occupancy data, we are not including those lands in this proposed revision as we have determined that those lands are not essential to the conservation of Peninsular bighorn sheep. Because a detailed vegetation map was not available at the time of the recovery plan, a team of biologists flew the entire western boundary in a helicopter and visually assessed vegetation associations (Service 2000, p. 159). The western boundary was determined by consensus and recorded by GPS from the helicopter position every ten seconds (Service 2000, p. 159). A 0.5 mi (0.8 km) buffer was added to this line to account for the advent of fire suppression (Service 2000, p. 160). In determining the western boundary of essential habitat in this proposed revision, we used vegetation maps that cover the entire range of the Peninsular

bighorn sheep, along with detailed aerial photography, expert opinion, and sheep use data to delineate boundaries, which we have determined more precisely captures the areas essential to the subspecies.

Like our methodology for this proposed revision, the 2001 methodology used a minimum slope criterion of 20 percent to delineate essential habitat; however, a 0.5 mi (0.8 km) buffer was included around slopes of greater than or equal to 20 percent (Service 2000, p. 158). This proposed rule does not include a buffer zone area around habitat determined to be essential to the subspecies.

In summary, we consider the recent data and methodology used in this proposed revision to more accurately and specifically delineate the areas essential to the Peninsular bighorn sheep. The methods used in the 2000 recovery plan and the 2001 critical habitat designation resulted in a more inclusive delineation of essential habitat due to limited data. Application of the revised methodology, based on the best available information, identified 460,487 ac (186,355 ha) of previously designated critical habitat that is not essential to the subspecies, and therefore we are not including these areas in this proposed revision to the critical habitat designation.

(2) We re-evaluated and revised the PCEs in light of the Alameda whipsnake court case (*Homebuilder's Ass'n of Northern Cal. v. U.S. Fish and Wildlife Service*, 268 F. Supp.2d 1197 (E.D. Cal. 2003)) and other relevant case law, and followed current Service guidelines and policies. The PCEs differ from those in the existing critical habitat rule in that they are reorganized into five separate PCEs for clarity. Furthermore, we have added specific information on elevational range, plant species used for foraging, and range of slopes required by the subspecies. This additional specificity was gained by evaluating the recovery plan and examining all recent sheep data, including data from radio collars and GPS collars providing precision to the identification of habitats used and preferred by Peninsular bighorn sheep. Applying the more precise PCEs to the mountain ranges inhabited by Peninsular bighorn sheep allowed us to fine tune the proposed revision to those areas containing preferred habitat for sheep use, and removing those areas unlikely to be used by Peninsular bighorn sheep.

(3) Approximately 29,924 ac (12,110 ha) of designated critical habitat were vacated in the July 31, 2006, consent decree. A portion of those acres are now

within proposed revised critical habitat. Of the 13,213 ac (5,347 ha) of vacated Agua Caliente Band of Cahuilla Indians Tribal lands, approximately 4,512 ac (1,826 ha) are now included in this proposal. However, we are proposing to exclude all Tribal lands from the final designation. Approximately 16,691 ac (6,756 ha) of mining lands at Ocotillo Mineral Material Sites and Fish Canyon Quarry property were vacated. In this proposed revision to critical habitat we are including roughly 50 percent of those vacated lands; specifically, we are including lands along the northernmost portion of the Ocotillo Mineral Material Sites property and the middle to southern portion of the Fish Canyon Quarry property. Both of these mining properties contain actively mined lands, but also contain areas in which we have recent documented use by Peninsular bighorn sheep and areas that meet the criteria used to identify critical habitat as described above. The Desert Riders lands vacated in the consent decree (approximately 20 ac (8 ha)) are not included in this proposed revision.

Our 2001 final critical habitat rule included the statement that "\* \* \*"; we are not aware of any information suggesting that particular areas within designated critical habitat are currently unsuitable or unused over the generational timeframe needed for the long-term conservation of bighorn sheep in the Peninsular Ranges" (66 FR 8655). However, we have reconsidered the information that was available to us at the time of the 2001 designation in light of all the information currently available to us, and we have determined that the methodology used in this proposed revision, which utilized the best available information, provides a more accurate and specific delineation of the areas essential to the Peninsular bighorn sheep, than that relied upon in the 2001 critical habitat designation.

#### **Proposed Revisions to the Critical Habitat Designation**

We are proposing four units as critical habitat for the Peninsular bighorn sheep. These units, which are almost entirely within the area included in the 2001 designation, if finalized, would replace the current critical habitat designation for the Peninsular bighorn sheep at 50 CFR 17.95(a). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Peninsular bighorn sheep. Table 1 shows the occupancy status of each unit being proposed as revised critical habitat.

TABLE 1.—OCCUPANCY STATUS OF CRITICAL HABITAT UNITS PROPOSED FOR THE PENINSULAR BIGHORN SHEEP

Unit	Occupied at time of listing?	Currently occupied?	Size of proposed revised critical habitat unit in acres (Hectares)
1. San Jacinto Mts. ....	Yes .....	Yes .....	15,273 (6,180 ha).
2A. N. Santa Rosa Mts. ....	Yes .....	Yes .....	74,998 ac (30,350 ha).
2B. S. Santa Rosa Mts. south to Vallecito Mts..	Yes .....	Yes .....	226,211 ac (91,545 ha).
3. Carrizo Canyon .....	Yes .....	Yes .....	67,928 ac (27,489 ha).
Total .....	.....	.....	384,410 ac (155,564 ha).

The four areas we propose as revised critical habitat are: (1) Unit 1—San Jacinto Mountains, (2) Unit 2A—North Santa Rosa Mountains, (3) Unit 2B—

South Santa Rosa Mountains south to Vallecito Mountains, and (4) Unit 3—Carrizo Canyon.

The approximate area of each proposed revised critical habitat unit is shown in Table 2.

TABLE 2.—PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE PENINSULAR BIGHORN SHEEP WITH LAND OWNERSHIP  
[Area estimates reflect all land within proposed critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of proposed revised critical habitat unit in acres (Hectares)
1. San Jacinto Mts. ....	Tribal <sup>1</sup> .....	4,512 ac (1,826 ha).
	BLM <sup>2</sup> .....	3,757 ac (1,520 ha).
	USFS <sup>3</sup> .....	1,266 ac (512 ha).
	Private .....	5,738 ac (2,322 ha).
	Subtotal .....	15,273 ac (6,180 ha).
2A. N. Santa Rosa Mts. ....	BLM .....	44,669 ac (18,077 ha).
	State <sup>4</sup> .....	16,856 ac (6,821 ha).
	Private .....	13,473 ac (5,452 ha).
	Subtotal .....	74,998 ac (30,350 ha).
2B. S. Santa Rosa Mts. south to Vallecito Mts. ....	BLM .....	16,266 ac (6,583 ha).
	State <sup>5</sup> .....	197,509 ac (79,929 ha).
	Private .....	12,436 ac (5,033 ha).
	Subtotal .....	226,211 ac (91,545 ha).
3. Carrizo Canyon .....	BLM .....	27,762 ac (11,235 ha).
	State <sup>6</sup> .....	35,475 ac (14,356 ha).
	Private .....	4,177 ac (1,690 ha).
	Local <sup>7</sup> .....	514 ac (208 ha).
	Subtotal .....	67,928 ac (27,489 ha).
Total .....	.....	384,410 ac (155,564 ha).

1—Tribal = Agua Caliente Band of Cahuilla Indians Reservation and Tribal Lands  
 2—BLM = Bureau of Land Management  
 3—USFS = United States Forest Service  
 4—State = California Department of Fish and Game (CDFG) and California State Lands Commission (CSLC)  
 5—State = CDFG, CSLC, and California Department of Parks and Recreation (CDPR)  
 6—State = CDPR  
 7—Local = City/County Park

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Peninsular bighorn sheep below.

*Unit 1: San Jacinto Mountains*

Unit 1 consists of approximately 15,273 ac (6,180 ha) in the San Jacinto Mountains, Riverside County. Unit 1 is generally located within an area bounded on the east by the city of Palm

Springs; bounded on the north by Windy Point and Snow Canyon; and that extends south to the northern Palm Canyon area. Land ownership within the unit includes approximately 4,512 ac (1,826 ha) of Agua Caliente Band of Cahuilla Indians Tribal land; 3,757 ac (1,520 ha) of BLM land; 1,266 ac (512 ha) of USFS land; and 5,738 ac (2,322 ha) of private land (Table 2).

Unit 1 begins at a low elevation of about 450 ft (137 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. It is the northernmost unit proposed as revised critical habitat for the Peninsular bighorn sheep. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a

range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 1 may require special management considerations or protection to ameliorate the threats of urban and industrial development, particularly in lower elevation areas, and to decrease the direct and indirect effects of human disturbance to the Peninsular bighorn sheep and its habitat, due to the proximity of this unit to the Palms Springs area. Please see the "Special Management Considerations or Protection" section of this proposed rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

This unit includes approximately 4,512 ac (1,826 ha) of Agua Caliente Band of Cahuilla Indians (Tribe) tribal lands supporting essential Peninsular bighorn sheep habitat. We are proposing to exclude these lands from the final designation. The designation of critical habitat would be expected to adversely impact our working relationship with the Tribe and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. Furthermore, these approximately 4,512 ac (1,826 ha) of Tribal land are currently managed by the Tribe in a manner that provides some conservation benefits to the Peninsular bighorn sheep, and are also within the plan area of the draft Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan (Tribal HCP) (see "Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act" for a detailed discussion).

This unit also includes lands within the plan area for the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP). We are considering the possible exclusion of approximately 5,738 ac (2,322 ha) of private land from the final critical habitat designation based on benefits provided to the Peninsular bighorn sheep and its PCEs by the MSCHP, which is in draft form and under review by the Service (see "Lands Covered by Management Plans " Exclusions Under Section 4(b)(2) of the Act" for a detailed discussion).

#### *Unit 2A: North Santa Rosa Mountains*

Unit 2A consists of approximately 74,998 ac (30,350 ha) in the northern Santa Rosa Mountains, Riverside

County. Unit 2A is generally located on the east-facing slopes of the northern Santa Rosa Mountains, is loosely bounded on the east by communities of the northern Coachella Valley, and extends from the Rancho Mirage area in the north to Martinez Canyon in the south. Land ownership within the unit includes approximately 44,669 ac (18,077 ha) of BLM land; 16,856 ac (6,821 ha) of land owned by the State of California; and 13,473 ac (5,452 ha) of private land (Table 2).

Unit 2A begins at a low elevation of about 50 ft (15 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 2A may require special management considerations or protection to ameliorate the threats of urban, industrial, and agricultural development, and to decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat, due to the proximity of this unit to the highly developed northern Coachella Valley.

Additionally, the PCEs in this unit may require special management considerations or protection to alleviate threats to Peninsular bighorn sheep and its habitat associated with roadways; State Route 74 cuts through the midsection of this unit and may impede movement between ewe groups. Please see the "Special Management Considerations or Protection" section of this proposed rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

This unit includes lands that are within the plan area for the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP). We are considering the possible exclusion of approximately 13,473 ac (5,452 ha) of private land in Unit 2A from the final critical habitat designation based on benefits provided to the Peninsular bighorn sheep habitat under this plan, which is in draft form and under review by the Service (see "Areas Considered for Exclusion Under Section 4(b)(2) of the Act" for a detailed discussion).

#### *Unit 2B: South Santa Rosa Mountains south to Vallecito Mountains*

Unit 2B consists of approximately 226,211 ac (91,545 ha) in the southern Santa Rosa Mountains, Coyote Canyon, San Ysidro Mountains, Pinyon Mountains, and Vallecito Mountains, in Riverside, San Diego, and Imperial counties. Unit 2B is generally located on the east-facing slopes of the above ranges; it is loosely bounded on the east by the Coachella Valley floor and extends from the southern Santa Rosa Mountains in the north to the Fish Creek Mountains in the south. Land ownership within the unit includes approximately 16,266 ac (6,583 ha) of BLM land; 197,509 ac (79,929 ha) of land owned by the State of California; and 12,436 ac (5,033 ha) of private land (Table 2). Portions of the Anza-Borrego Desert State Park occur within this unit.

Unit 2B begins at a low elevation of about 150 ft (45 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 2B may require special management considerations or protection to ameliorate the threats of urban, industrial, and agricultural development due to the proximity of this unit to the Coachella Valley, especially the lower elevation areas in the northeastern portions of this unit. Additionally, the PCEs in this unit may require special management considerations or protection to decrease the direct and indirect effects of human disturbance to Peninsular bighorn sheep and its habitat due to recreational activity. Most of this unit includes lands within Anza-Borrego Desert State Park, which is open to recreation activities. Furthermore, the PCEs in this unit may require special management considerations or protection to alleviate threats to Peninsular bighorn sheep and its habitat associated with State Route 78, which cuts through the southern portion of this unit and may impede movement between ewe groups, and mining operations at Fish Canyon Quarry. Please see the "Special Management Considerations or Protection" section of this proposed rule

for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

*Unit 3: Carrizo Canyon*

Unit 3 consists of approximately 67,928 ac (27,489 ha) in the Carrizo Canyon area, in San Diego and Imperial counties. Unit 3 is generally located in Carrizo Canyon and the surrounding In-Ko-Pah Mountains, Jacumba Mountains, Coyote Mountains, and Tierra Blanca Mountains; it is loosely bounded on the north, east, and west by the Coachella Valley floor. Land ownership within the unit includes approximately 27,762 ac (11,235 ha) of BLM land; 35,475 ac (14,356 ha) of land owned by the State of California; 4,177 ac (1,690 ha) of private land; and 514 ac (208 ha) of local park land (Table 2). Portions of the Anza-Borrego Desert State Park occur within this unit.

Unit 3 begins at a low elevation of about 400 ft (122 m) on the eastern slope and rises to about 4,600 ft (1,400 m) to the west. This unit was occupied at the time of listing and is currently occupied (Table 1). Habitat in this unit contains features that are essential to the conservation of the Peninsular bighorn sheep including a range of vegetation types (PCE 2), foraging and watering areas including alluvial fans (PCE 4 and 5), and steep to very steep, rocky terrain with elevations and slopes that provide for sheltering, lambing, mating, movement among and between ewe groups (PCE 1), and predator evasion (PCE 3).

The PCEs in Unit 3 may require special management considerations or protection to decrease the direct and indirect effects of human disturbance due to recreational activity to

Peninsular bighorn sheep and its habitat. Most of this unit occurs within the Anza-Borrego Desert State Park, which is open to recreation activities. The PCEs in Unit 3 may also require special management considerations or protection to protect Peninsular bighorn sheep habitat from mining operations at Ocotillo Mineral Material Site. Please see the "Special Management Considerations or Protection" section of this proposed rule for a detailed discussion of the threats to Peninsular bighorn sheep habitat and potential management considerations.

Table 3 provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but that we are proposing to exclude from the final revised critical habitat designation. Table 3 also provides reasons for the proposed exclusions.

TABLE 3.—PROPOSED EXCLUSIONS BY CRITICAL HABITAT UNIT

Unit	Statutory	Reason for proposal exclusion	Area meeting the definition of critical habitat in acres (Hectares)	Area proposed for exclusion in acres (Hectares)
1. San Jacinto Mts.	4(b)(2) .....	Government-to-Government Relationship <sup>1</sup>	4,512 ac (1,826 ha)	4,512 ac (1,826 ha).
Total .....	.....	.....	.....	4,512 ac (1,826 ha).

<sup>1</sup> Government-to-Government Relationship = Secretarial Order 3206, "American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2).

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve

its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any discretionary Federal action.

The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and to avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, if we list those species or designate critical habitat. We may conduct conferences either informally or formally. We typically use

informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We typically use formal conferences when we or the Federal agency believes the proposed action is likely to jeopardize the continued existence of the species proposed for listing or adversely modify proposed critical habitat.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed species or critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed species were already listed or the proposed critical habitat was already designated. We may adopt the conference opinion as the biological opinion when the species is listed or the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if

those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Peninsular bighorn sheep or its designated critical habitat require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

#### *Application of the "Adverse Modification" Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Peninsular bighorn sheep. Generally, the conservation role of the Peninsular bighorn sheep critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the Peninsular bighorn sheep include, but are not limited to:

(1) Actions that would significantly reduce ongoing management and conservation efforts that benefit the Peninsular bighorn sheep on public lands. Such activities could include, but are not limited to, the sale, exchange, or lease of lands managed by BLM or other

Federal agencies, and the State of California. These activities could reduce the amount of space that is available for individual and population growth and normal behavior, as well as reduce or eliminate the number and extent of sites for foraging, watering, breeding, reproduction, and rearing of offspring. These activities could also reduce the opportunities available to Federal agencies to exercise their section 7(a)(1) responsibilities to carry out programs to conserve listed species.

(2) Actions that would significantly reduce the availability of or accessibility to seasonal ranges. Such activities could include, but are not limited to, grazing, mining, and power line and road construction activities. These activities could degrade, reduce, fragment, or eliminate available foraging resources or alter current foraging activities of Peninsular bighorn sheep.

(3) Actions that would result in the significant expansion of dense vegetation communities within Peninsular bighorn sheep habitat. Such activities could include, but are not limited to, fire suppression. These activities could allow expansion of vegetation cover such that movement patterns of bighorn sheep are altered by avoidance of these areas. Tall, dense vegetation decreases visibility for bighorn sheep and provides cover for predators such as the mountain lion, a common predator of Peninsular bighorn sheep.

(4) Actions that would create significant barriers to movement. Such activities could include, but are not limited to, road construction, residential development, and resort or campground facility development or expansion. These activities could interfere with movement within and between habitats, thereby reducing the availability of habitat for foraging, watering, breeding, reproduction, sheltering, and rearing of offspring. These activities could also reduce opportunities for movement between existing populations, dispersal, and genetic interchange between ewe groups.

(5) Actions that would significantly degrade habitat or cause a disturbance to Peninsular bighorn sheep. Such activities could include, but are not limited to, recreational activities, such as off-road vehicle use, hiking, camping, rock climbing, horseback riding, and outfitter guided activities. These activities could displace animals from foraging areas, water sources, and escape terrain, and could impact the quality and quantity of forage.

## Exemptions and Exclusions

### Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If we consider an exclusion we must determine whether excluding the area would result in the extinction of the species.

In the following sections, we address a number of general issues that are relevant to the exclusions we are considering. In addition, we are conducting an economic analysis of the impacts of the proposed critical habitat designation, which will be available for public review and comment when it is complete. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 424.19.

### Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the

conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

The identification of those areas that are essential for the conservation of the species and can, if managed, provide for the recovery of a species is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the features or PCEs essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

For 30 years prior to the Ninth Circuit's decision in *Gifford Pinchot*, consistent with the 1986 regulations, we essentially combined the jeopardy standard with the standard for

destruction or adverse modification of critical habitat when evaluating Federal actions that affected currently occupied critical habitat. However, the court of appeals ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on species recovery. Thus, critical habitat designations may provide greater regulatory benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential to the conservation of the species is not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take

place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat; therefore, implementing recovery actions. We believe that in many instances the benefit to a species and/or its habitat realized through the designation of critical habitat is low when compared to the conservation benefit that can be achieved through voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project only, and not to providing conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the Peninsular bighorn sheep. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also

would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

#### **Conservation Partnerships on Non-Federal Lands**

Most federally listed species in the United States will not recover without cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995, p. 2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the

Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 2; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by effective partnerships or other conservation commitments can often be high.

#### **Benefits of Excluding Lands With Approved Management Plans**

The benefits of excluding lands within approved long-term management plans (including HCPs) from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that

might be imposed by critical habitat. Many conservation plans provide conservation benefits not only to listed species, but to unlisted sensitive species as well, resulting in enhanced ecosystem management. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Designating lands within approved management plan areas as critical habitat would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, both HCP and Natural Community Conservation Plan (NCCP)—HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of “harm” at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions occurring within the plan area that may affect listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification, in accordance with the definition of harm referenced above.

The information provided in the previous sections applies to all the following discussions of the benefits of inclusion and exclusion of critical habitat.

#### *Areas Considered For Exclusion Under Section 4(b)(2) of the Act*

We are proposing to exclude Tribal lands in Unit 1 in consideration of Secretarial Order 3206, “American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997); the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). Furthermore, we are evaluating and considering the possible exclusion of private lands in Unit 1 and 2A, which are covered under the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP), under section 4(b)(2) of the Act, and may exclude them from the final revised critical habitat designation for the Peninsular bighorn sheep. With regard to the draft Coachella Valley MSHCP plan area, we are only considering private lands for exclusion at this time, while also soliciting comment on the appropriateness of excluding CDFG and BLM lands as Memorandum of Understanding (MOU) partners to the MSHCP. We are considering the possible exclusion of the areas covered by the draft MSHCP because we believe when the plan is finalized that:

- (1) The lands’ value for conservation will be preserved for the foreseeable future by existing protective actions, and
- (2) They are appropriate for exclusion under the “other relevant factor” provisions of section 4(b)(2) of the Act.

We specifically solicit comments on the inclusion or exclusion of these areas. In the paragraphs below, we provide a detailed analysis for consideration of exclusion of these lands under section 4(b)(2) of the Act.

#### *Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act—American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act*

In accordance with the Secretarial Order 3206, “American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997); the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2),

we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as unwarranted and an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

We have determined that approximately 4,512 ac (1,826 ha) of tribal land owned by the Agua Caliente Band of Cahuilla Indians are essential to the conservation of the Peninsular bighorn sheep, and are proposing to exclude these lands under section 4(b)(2) of the Act. In making our final decision with regard to these Tribal lands, we will be considering several factors including our relationship with the Tribe, the Tribe’s current management of Peninsular bighorn sheep habitat, and the Tribe’s ongoing cooperation with us in the development of the Agua Caliente Band of Cahuilla Indians Tribal Habitat Conservation Plan (Tribal HCP).

The Agua Caliente Band of Cahuilla Indians highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its lands, including the habitat of endangered and threatened species. The Tribe currently implements a conservation strategy for the Peninsular bighorn sheep to protect and manage bighorn sheep habitat on Tribal lands (as set forth in the draft Tribal Habitat Conservation Plan adopted by the Tribe on or about November 11, 2002). This conservation strategy requires conservation of at least 85 percent of bighorn sheep habitat identified by the Tribe on Tribal lands and 100 percent of bighorn sheep use areas and habitat linkages identified by the Tribe on Tribal lands. These management measures provide a substantial conservation benefit to the subspecies.

In addition, we are currently working with the Tribe to develop the first Tribal multiple-species HCP in the United States. Through this cooperative effort, the Tribe has demonstrated a sustained commitment to manage its lands in a

manner consistent with the subspecies' conservation. We are currently processing the Tribe's application for a section 10(a)(1)(B) permit based on a revised draft Tribal Habitat Conservation Plan (2007), and anticipate publishing a Notice of Availability for public review in the **Federal Register** in October 2007.

The Tribal HCP area will cover approximately 36,720 ac (14,860 ha) of land, including approximately 4,512 ac (1,826 ha) in Unit 1. The Tribe's goals for conservation of Peninsular bighorn sheep are: (1) Conserving habitat within the Tribal HCP plan area (PCE 1, 2, 3, 4, and 5); (2) maintaining connectivity, preventing fragmentation, and allowing movement within key linkage areas (PCE 1 and 4); and (3) adaptively managing habitat quality and subpopulations/ewe groups to alleviate threats in the Tribal HCP plan area (Tribal HCP 2007, p. 4–8). Conservation objectives of the draft Tribal HCP for Peninsular bighorn sheep include the following: (1) Ensure implementation of the Tribal HCP is consistent with the recovery plan (Service 2000); (2) conserve a minimum of 17,692 ac (7,160 ha) of habitat within the plan area; (3) conserve 100 percent of Use Areas (areas defined by the Tribal HCP to have high functional value); (4) conserve land necessary to maintain linkages/connectivity; (5) minimize direct and indirect impacts from Covered Activities by ensuring implementation of development standards, including avoidance and minimization measures; (6) minimize impacts from recreational activities; (7) alleviate threat of disease transfer from livestock or nonnative wildlife; (8) monitor population size and mortality rates; (9) fund or undertake additional studies regarding this subspecies; (10) ensure management action thresholds are routinely assessed; (11) implement adaptive management; and (12) conserve habitat quality through plan implementation (Tribal HCP 2007, p. 4–9).

To aid in the public review of this proposed revised critical habitat, we are providing maps of the areas that we are proposing to exclude. Maps and GIS layers for areas proposed for exclusion are available from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) and on our Web site at <http://www.fws.gov/Carlsbad>.

#### **The Benefits of Exclusion Outweigh the Benefits of Inclusion**

The general benefits of critical habitat described in the "Benefits of Critical Habitat Designation" section would apply to habitat designated on Tribal

lands. Activities occurring on Tribal lands will generally involve a Federal nexus. However, as discussed above, the Tribe is aware of the value of Tribal lands to the conservation of the Peninsular bighorn sheep and currently implements management measures that contribute to the conservation of the subspecies and protect its essential habitat. Conservation measures will continue to be implemented by the Tribe regardless of whether the areas are designated as critical habitat. In light of this continued commitment by the Tribe to manage its lands in a manner that promotes the conservation of the Peninsular bighorn sheep, the designation of critical habitat would provide minimal additional benefit to the subspecies on these Tribal lands.

The designation of critical habitat would be expected to adversely impact our working relationship with the Tribe and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion into tribal natural resource programs. Our working relationship with the Tribe has been extremely beneficial in implementing natural resource programs of mutual interest. The benefits of excluding Agua Caliente Band of Cahuilla Indians Tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribal conservation and natural resource management plans for their lands and resources, which includes the Peninsular bighorn sheep and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the Peninsular bighorn sheep and its habitat; (3) the allowance for continued meaningful collaboration and cooperation on Peninsular bighorn sheep management and other resources of interest to the Federal government; and (4) the provision of conservation benefits to desert ecosystems and a host of species, including the Peninsular bighorn sheep and its habitat, that might not otherwise occur.

We believe that the Tribe should be the governmental entity to manage and promote the conservation of the Peninsular bighorn sheep on its lands. We recognize and endorse the Tribe's fundamental right to provide for tribal resource management activities, including those relating to Peninsular bighorn sheep. We have determined that the identified benefits of excluding the Tribal lands from the critical habitat designation outweigh the minimal benefits of inclusion, and are proposing to exclude approximately 4,512 ac (1,826 ha) of Tribal lands in Unit 1 from

the final designation under section 4(b)(2) of the Act.

#### *Exclusion Will Not Result in Extinction of the Species*

We have determined that the exclusion of approximately 4,512 ac (1,826 ha) from the final designation of critical habitat for Peninsular bighorn sheep will not result in the extinction of the subspecies because the Tribe currently implements a conservation strategy for the Peninsular bighorn sheep that requires conservation of at least 85 percent of bighorn sheep habitat identified by the Tribe on Tribal lands and 100 percent of bighorn sheep use areas and habitat linkages identified by the Tribe on Tribal lands. In addition, working cooperatively with us, the Tribe has made substantial progress in developing its Tribal HCP. Through this cooperative effort, the Tribe has demonstrated a sustained commitment to manage its lands in a manner consistent with the subspecies' conservation. Furthermore, the area proposed for exclusion is occupied by the Peninsular bighorn sheep, and the jeopardy standard of section 7 and routine implementation of conservation measures through the section 7 consultation process also provide assurances that the subspecies will not go extinct. The proposed exclusion of critical habitat leaves these protections unchanged from those that would exist if the proposed excluded areas were designated as critical habitat. Therefore, we have determined that the exclusion of the Tribal lands will not result in the extinction of the subspecies.

#### *Lands Covered by Management Plans—Exclusions Under Section 4(b)(2) of the Act*

When performing the required analysis under section 4(b)(2) of the Act, the existence of a management plan (HCPs as well as other types) that considers enhancement or recovery of listed species as its management standard is relevant to our weighing of the benefits of inclusion of a particular area in the critical habitat designation. In analyzing particular areas covered by management plans under section 4(b)(2) of the Act, we generally consider a number of factors including the following:

(1) Whether the plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7(a)(2) of the Act;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions will

be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

#### Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP)

We believe that the Coachella Valley MSHCP, when implemented, will provide conservation strategies and measures consistent with the conservation of the Peninsular bighorn sheep. We are confident that the plan will be completed in the near future, and are considering the exclusion of non-Federal lands covered by the plan that provide for the conservation of the Peninsular bighorn sheep and its PCEs. We are requesting comments on the benefit to the Peninsular bighorn sheep and its PCEs from the conservation measures established by the Coachella Valley MSHCP.

The draft MSHCP has been in development from the mid-1990s to present. The following entities signed an MOU (Planning Agreement) to govern the preparation of the MSHCP: the Coachella Valley Association of Governments (CVAG); Cities of Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage; County of Riverside; Service; California Department of Fish and Game; BLM; U.S. Forest Service; and National Park Service. Subsequently, the California Department of Transportation, Coachella Valley Water District, Imperial Irrigation District, Riverside County Flood Control and Water Conservation District, Riverside County Regional Parks and Open Space District, Riverside County Waste Management District, California Department of Parks and Recreation, and Coachella Valley Mountains Conservancy decided to participate in preparation of the MSHCP. The parties later amended the Planning Agreement to also address the requirements of the Natural Community Conservation Planning (NCCP) Act and prepared an NCCP pursuant to California Fish and Game Code Section 2810. The Coachella Valley Association of Governments, Coachella Valley Conservation Commission, County of Riverside, Riverside County Flood Control and Water Conservation District, Riverside County Regional Parks and Open Space District, Riverside County Waste Resources Management District, City of Cathedral City, City of Coachella, City of Indian Wells, City of Indio, City of La Quinta, City of Palm Desert, City of

Palm Springs, City of Rancho Mirage, Coachella Valley Water District, Imperial Irrigation District, Coachella Valley Mountains Conservancy, California Department of Transportation, and California Department of Parks and Recreation have submitted an application to the Service for a section 10(a)(1)(B) permit under the Act.

The MSHCP area encompasses approximately 1.2 million ac (485,623 ha), of which 69,000 ac (27,923 ha) are Tribal lands and are not included in the MSHCP, leaving a total of approximately 1.1 million ac (445,154 ha) addressed by the MSHCP in Riverside County. BLM has been an official participant in the draft Coachella Valley MSHCP planning process and has committed, under their California Desert Conservation Area Plan Amendment (CDCAPA), 95 percent of their public land base within the conservation areas of the MSHCP to be managed consistent with the Coachella Valley MSHCP once it is completed.

CVAG has demonstrated a sustained commitment to develop the MSHCP to comply with section 10(a)(1)(B) of the Act, the California Endangered Species Act, and the State's NCCP program. On April 21, 2006, the Service published a notice of availability of the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the MSHCP (71 FR 20719). On March 30, 2007, the Service published a notice of availability of a supplement to the Final EIS for the MSHCP (72 FR 15148).

The MSHCP adopted the Peninsular bighorn sheep habitat model described in the 2000 recovery plan for this subspecies (Service 2000). Accordingly, the MSHCP area includes 172,811 ac (69,934 ha) of modeled Peninsular bighorn sheep habitat. These 172,811 ac (69,934 ha) include the approximately 10,761 ac (4,354 ha) we are proposing in Unit 1 and the approximately 74,998 ac (30,350 ha) we are proposing in Unit 2A. The draft MSHCP proposes to ensure conservation of a minimum of 97 percent of all modeled habitat for Peninsular bighorn sheep as part of the preferred alternative reserve design that includes large areas of suitable habitat (CVAG 2007, p. 9–261). Approximately 78 percent of the proposed conserved modeled habitat are within Existing Conservation Lands and will be managed as part of the Reserve System (CVAG 2007, p. 9–261); the remaining 19 percent will also be conserved according to the draft MSHCP (CVAG 2007, p. 9–261). Conservation objectives of this draft MSHCP include: (1) Ensuring conservation of important

habitat (PCE 1, 2, 3, 4, and 5); (2) ensuring connectivity by preventing fragmentation and maintaining biological corridors and linkages within essential habitat to allow dispersal, provide for population fluctuation, and enhance genetic diversity (PCE 1 and 4); and (3) ensuring conservation of habitat quality through biological monitoring and adaptive management (PCE 1, 2, 3, 4, and 5) (CVAG 2007, p. 9–261).

According to the draft MSHCP, disturbance to Peninsular bighorn sheep with implementation of the plan is expected to be low because: (1) Conserved habitat areas are large enough to maintain self-sustaining populations of Peninsular bighorn sheep and incorporate key habitat elements for the subspecies; (2) implementation of the MSHCP is consistent with the recovery strategy delineated in the 2000 recovery plan; (3) implementation of the conservation objectives to protect habitat for this subspecies will provide connectivity; and (4) lands in the MSHCP reserve system would be managed and monitored to address significant edge effect problems, human disturbance, fragmentation, impacts from exotic species, and other stressors to Peninsular bighorn sheep (CVAG 2007, p. 9–261).

Although not yet completed and implemented, CVAG has made significant progress in the development of its MSHCP to meet the requirements outlined in section 10(a)(1)(B) of the Act. In light of the Service's confidence that CVAG will reach a successful conclusion to its MSHCP development process, we are evaluating and considering the possible exclusion of approximately 19,211 ac (7,774 ha) of private land within their preferred alternative reserve design from the final revised critical habitat designation for Peninsular bighorn sheep depending on the progress made on the draft MSHCP between now and the publication of the final rule. We are requesting comments on the benefits to the Peninsular bighorn sheep and its PCEs from the conservation measures established by the MSHCP.

Included within the MSHCP plan area are BLM lands, outside of the Coachella Valley Preserve System, which we are soliciting comment on the appropriateness of excluding from the final revised critical habitat designation based on BLM's official participation in the draft Coachella Valley MSHCP planning process and commitment under their CDCAPA to manage their lands consistent with the Coachella Valley MSHCP once it is completed. We are also soliciting comment on the appropriateness of excluding CDGF

lands within the MSHCP plan area based on their involvement with the Coachella Valley MSHCP.

#### Provisions of the Coachella Valley MSHCP Specific to Peninsular Bighorn Sheep

In general, we find that the benefits of critical habitat designation on lands within pending HCPs that cover those species are small, while the benefits of excluding such lands from designation of critical habitat are substantial. We are evaluating and considering the possible exclusion of approximately 19,211 ac (7,774 ha) of private land within CVAG's MSHCP preferred alternative reserve design area from the designation of critical habitat. The evaluation process involves determining whether the benefits of excluding these lands from Units 1 and 2A outweigh the benefits of including these lands. We expect the PCEs required by Peninsular bighorn sheep to benefit by the conservation measures outlined in the MSHCP and as described above. In summary, these conservation measures include: Conservation of habitat and implementation of the MSHCP consistent with the recovery plan (Service 2000); preservation of essential habitat and connectivity; biological monitoring and adaptive management; and minimization of disturbance and edge effects. These specific conservation actions, avoidance and minimization measures, and management for Peninsular bighorn sheep and PCEs, if implemented, are expected to exceed any conservation value that could be provided as a result of regulatory protections afforded through a critical habitat designation.

Designation of critical habitat alone does not achieve recovery or require management of those lands identified in the critical habitat rule. The exclusion of these lands that we are currently evaluating and considering for possible exclusion from the final critical habitat designation would help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of the MSHCP. The benefits of excluding these lands from critical habitat, should the MSHCP be finalized and implemented, are expected to outweigh the minimal benefits of including these lands as critical habitat, including the educational benefits of critical habitat designation through informing the public of areas important for the long-term conservation of Peninsular bighorn sheep. Such educational benefits can still be accomplished from materials provided on our Internet website and through the overall designation process,

including the notice and public comment period, which will occur whether or not these particular areas are designated.

#### Economics

We are preparing an analysis of the economic impacts of proposing revised critical habitat for the Peninsular bighorn sheep. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://carlsbad.fws.gov>, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**). We may exclude areas from the final revised rule based on the information in the economic analysis.

#### Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are requesting the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed revised critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revision of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed revised critical habitat rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

#### Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any request for hearings. We must receive your request for a public hearing within 45 days after the date of publication in the **Federal Register**. Send your request to the person named in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel

legal and policy issues. However, based on information available from the previous designation, we do not anticipate that it will have an annual effect on the economy of \$100 million or more or to affect the economy in a material way. To determine the economic consequences of designating the specific area as critical habitat, we are preparing a draft economic analysis of this proposed action, which will be available for public comment. This economic analysis also will be used to determine compliance with E.O. 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, E.O. 12630, and E.O. 13211.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A-4, September 17, 2003). Under Circular A-4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

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

We will announce the availability of the draft economic analysis in the **Federal Register** and in local newspapers so that it is available for public review and comments. At that time, the draft economic analysis will also be available on the Internet at <http://carlsbad.fws.gov>, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES**).

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

Under the Regulatory Flexibility Act (RFA: 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must

publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed revised designation in the **Federal Register** and reopen the public comment period for the proposed revised designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

#### *Unfunded Mandates Reform Act*

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

(a) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that

"would impose an enforceable duty upon State, local, or Tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

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

(b) Due to current public knowledge of the subspecies' protection, the prohibition against take of the subspecies both within and outside of the areas proposed in this rule for designation and the fact that the vast majority of the areas proposed in this rule are currently designated as critical

habitat, we do not believe that this proposed rule will significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis, we will further evaluate this issue and revise this assessment if appropriate.

#### *Takings*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating revised critical habitat for the Peninsular bighorn sheep in a takings implications assessment. The takings implications assessment concludes that this proposed revised designation of critical habitat for the Peninsular bighorn sheep does not pose significant takings implications for lands within or affected by the designation.

#### *Federalism*

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in California. Critical habitat is already designated for the Peninsular bighorn sheep. If finalized, this proposal to revise the designated critical habitat will result in a significant decrease in the area designated. Thus, the designation of revised critical habitat for the Peninsular bighorn sheep would not impose any additional regulatory restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the PCEs of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed revised critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the areas proposed for designation to assist the public in understanding the habitat needs of the Peninsular bighorn sheep.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit Court (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

**Clarity of the Rule**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have identified Tribal lands that meet the definition of critical habitat for the Peninsular bighorn sheep, and have included them in this proposal.

However, we are proposing to exclude all Tribal lands from the final critical habitat designation under section 4(b)(2) of the Act (see "Proposed Exclusion of Agua Caliente Band of Cahuilla Indians Tribal Lands Under Section 4(b)(2) of the Act" for a detailed discussion). We will continue to coordinate with the Tribe during the designation process.

*Energy Supply, Distribution, or Use*

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule to designate revised critical habitat for the Peninsular bighorn sheep is a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues, we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

**Author**

The primary author of this package is Justin Shoemaker of the Carlsbad Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "Sheep, bighorn" under "MAMMALS" in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Sheep, Peninsular bighorn.	<i>Ovis canadensis nelsoni</i> .	U.S.A. (western conterminous States), Canada (south-western), Mexico (northern).	U.S.A. (CA) Peninsular Ranges.	E	634	17.95(a)	NA.
*	*	*	*	*	*	*	*

3. In § 17.95(a), revise the entry for Bighorn Sheep (Peninsular Ranges)(*Ovis canadensis*) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

(a) Mammals.

\* \* \* \* \*

Bighorn Sheep (Peninsular Ranges) (*Ovis canadensis nelsoni*)

(1) Critical habitat units are depicted for Riverside, San Diego, and Imperial Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Peninsular bighorn sheep are:

- (i) Moderate to steep, open slopes (20 to 60 percent) and canyons, with canopy cover of 30 percent or less (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide space for sheltering, predator detection, rearing of young, foraging and watering, mating, and movement within and between ewe groups.

(ii) Presence of a variety of forage plants, indicated by the presence of shrubs (e.g., *Ambrosia* spp., *Caesalpinia* spp., *Hyptis* spp., *Sphaeralcea* spp., *Simmondsia* spp.), that provide a primary food source year round, grasses (e.g., *Aristida* spp., *Bromus* spp.) and cacti (e.g., *Opuntia* spp.) that provide a source of forage in the fall, and forbs (e.g., *Plantago* spp., *Ditaxis* spp.) that provide a source of forage in the spring.

(iii) Steep, rugged, slopes (60 percent slope or greater) (below 4,600 feet (1,402 meters) elevation in the Peninsular Ranges) that provide secluded space for lambing as well as terrain for predator evasion.

(iv) Alluvial fans, washes, and valley bottoms that provide important foraging areas where nutritious and digestible plants can be more readily found during times of drought and lactation and that provide and maintain habitat connectivity by serving as travel routes between and within ewe groups,

adjacent mountain ranges, and important resources areas, such as foraging areas and escape terrain.

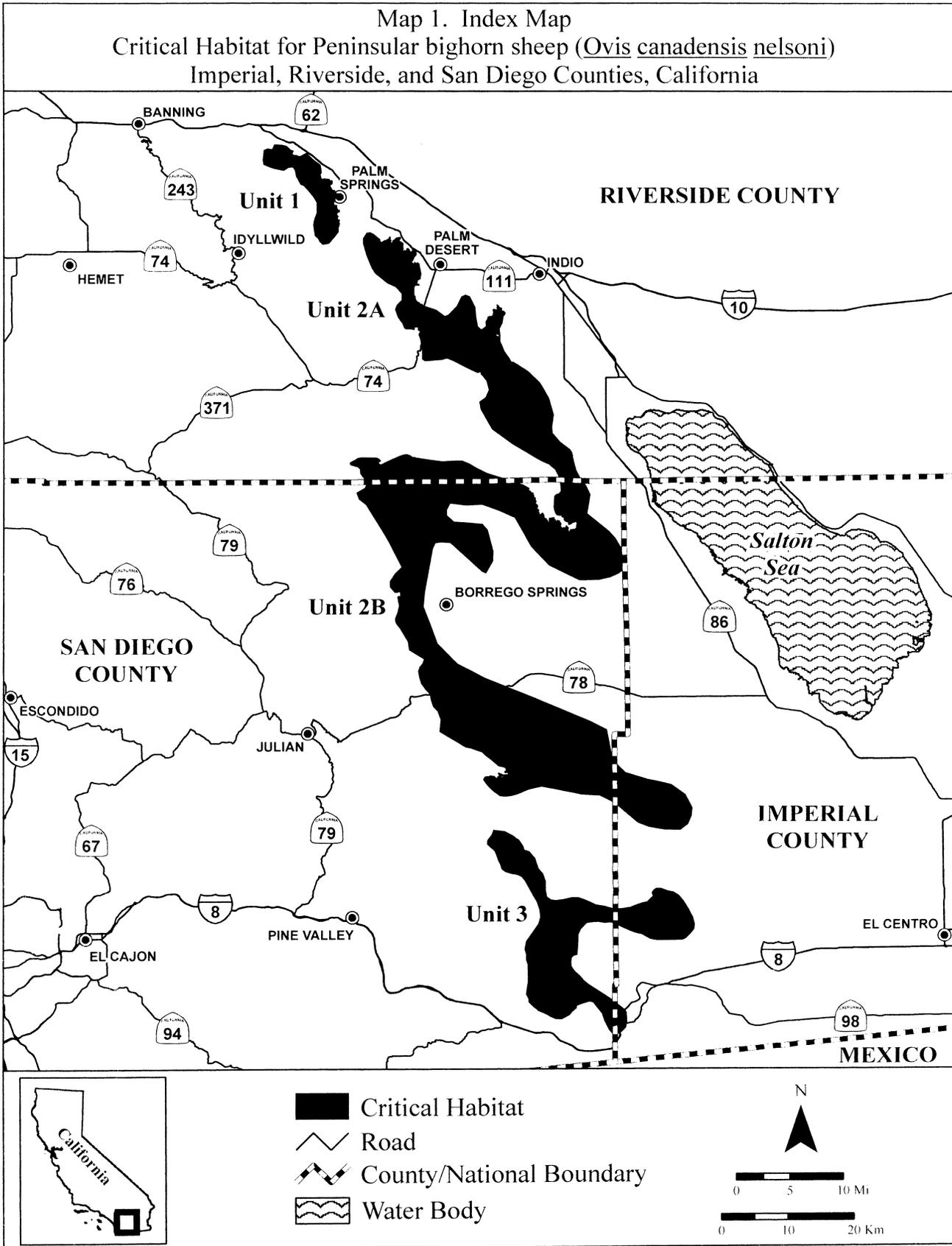
(v) Intermittent and permanent water sources that are available during extended dry periods and that provide relatively nutritious plants and drinking water.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map of critical habitat units for the Peninsular bighorn sheep (Map 1) follows:

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(6) Unit 1: San Jacinto Mountains, Riverside County, California.

(i) From USGS 1:24,000 quadrangles Desert Hot Springs, Palm Springs, and San Jacinto Peak, and White Water. Land bounded by the following

Universal Transverse Mercator (UTM) North American Datum of 1927

(NAD27) coordinates (E, N): 534134,

3750021; 534465, 3749681; 534495,

3749651; 534495, 3749651; 534495,

3749651; 534495, 3749651; 534572,

3749621; 534997, 3749456; 534792,

3749102; 534885, 3748934; 535128,

3748785; 535310, 3748807; 535426,

3748822; 535471, 3748798; 535663,

3748697; 535706, 3748674; 535706,

3748652; 535713, 3748654; 535739,

3748650; 535777, 3748637; 535816,

3748627; 535834, 3748623; 535944,

3748624; 535999, 3748624; 536000,

3748624; 536000, 3748624; 536056,

3748624; 536056, 3748656; 536499,

3748909; 536927, 3749153; 537308,

3748794; 538009, 3748134; 538064,

3748082; 538535, 3747726; 538535,

3747703; 538566, 3747702; 538901,

3747449; 539106, 3747293; 539235,

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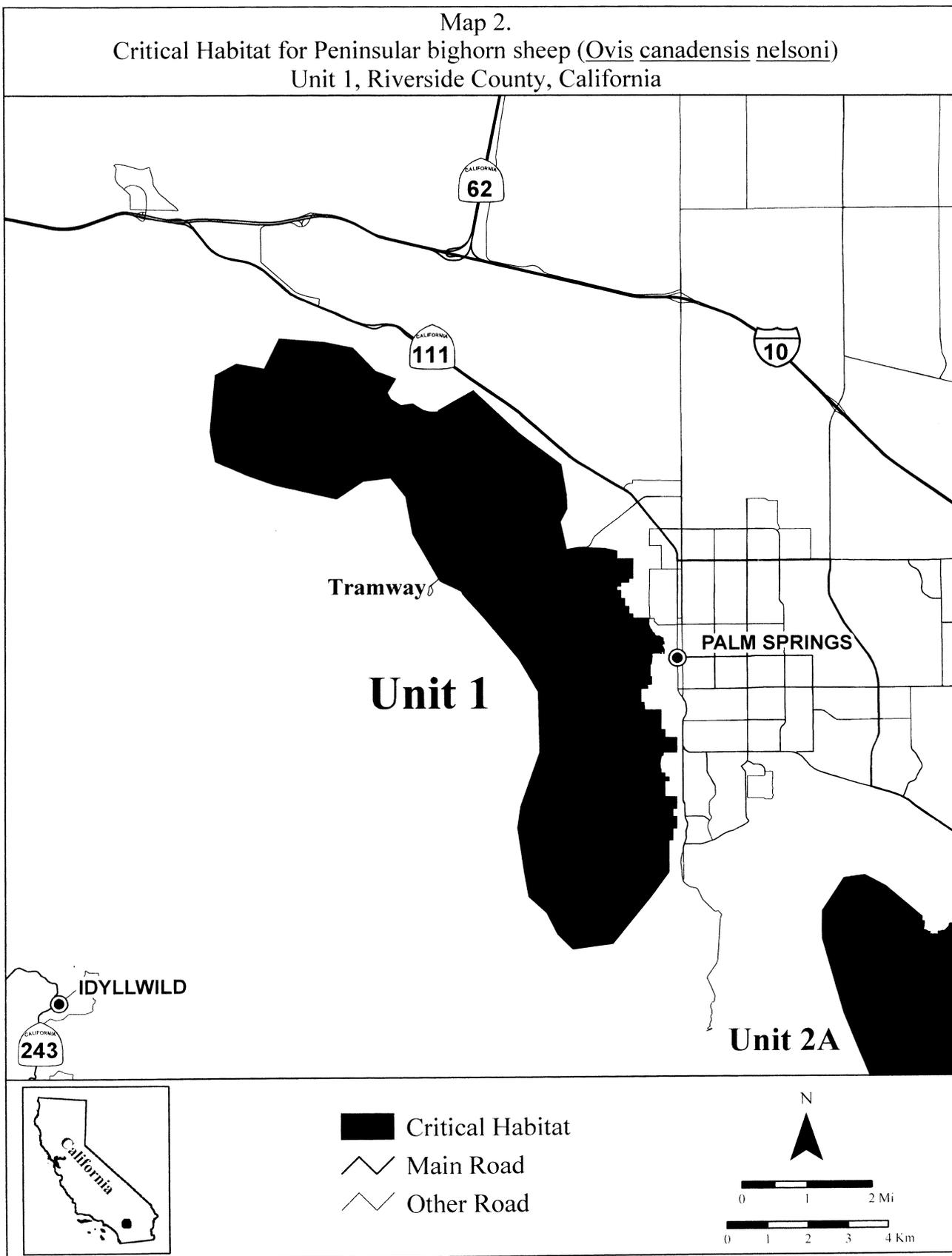
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(ii) Note: Map of Unit 1, San Jacinto  
Mountains (Map 2) follows:

**BILLING CODE 4310-55-P**





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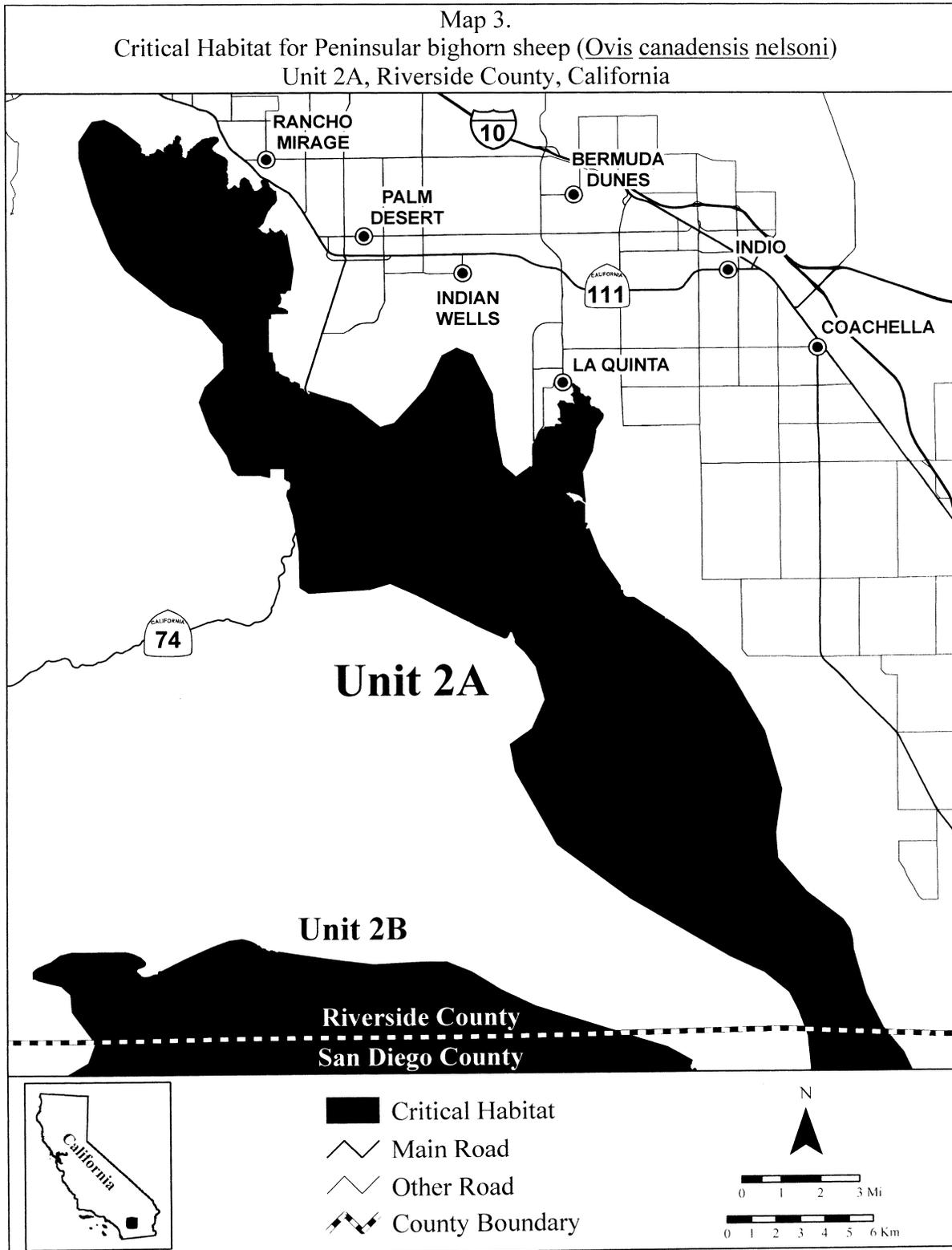
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(ii) Note: Map of Unit 2A, North Santa Rosa Mountains (Map 3) follows:

BILLING CODE 4310-55-P



(8) Unit 2B: South Santa Rosa Mountains south to Vallecito Mountains, Riverside, San Diego, and Imperial Counties, California.

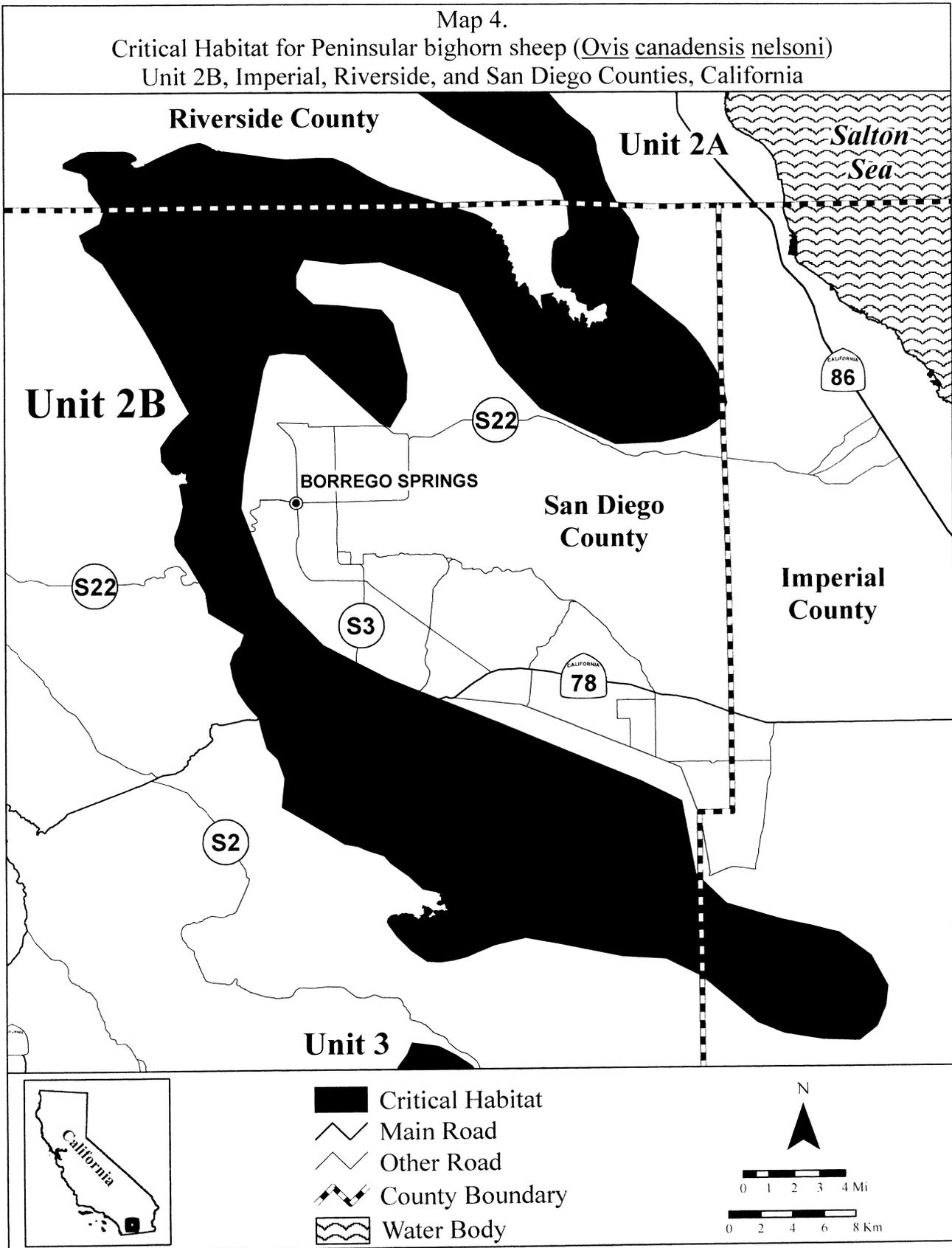
(i) From USGS 1:24,000 quadrangles Agua Caliente Hot Springs, Arroyo Tapiado, Borrego Mountain, Borrego Mountain SE, Borrego Palm Canyon, Borrego Sink, Bucksnot Mountain, Carrizo Mountain NE, Clark Lake, Clark Lake NE, Collins Valley, Earthquake Valley, Fonts Point, Harper Canyon, Plaster City NW, Rabbit Peak, Seventeen Palms, Tubb Canyon, and Whale Peak. 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(ii) Note: Map of Unit 2B, South Santa Rosa Mountains south to Vallecito Mountains (Map 4) follows:

**BILLING CODE 4310-55-P**



(9) Unit 3: Carrizo Canyon, San Diego and Imperial Counties, California.

(i) From USGS 1:24,000 quadrangles Agua Caliente Hot Springs, Arroyo Tapiado, Carrizo Mountain, In-Ko-Pah Gorge, Jacumba, Painted Gorge, Sombrero Peak, and Sweeney Pass.

Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927

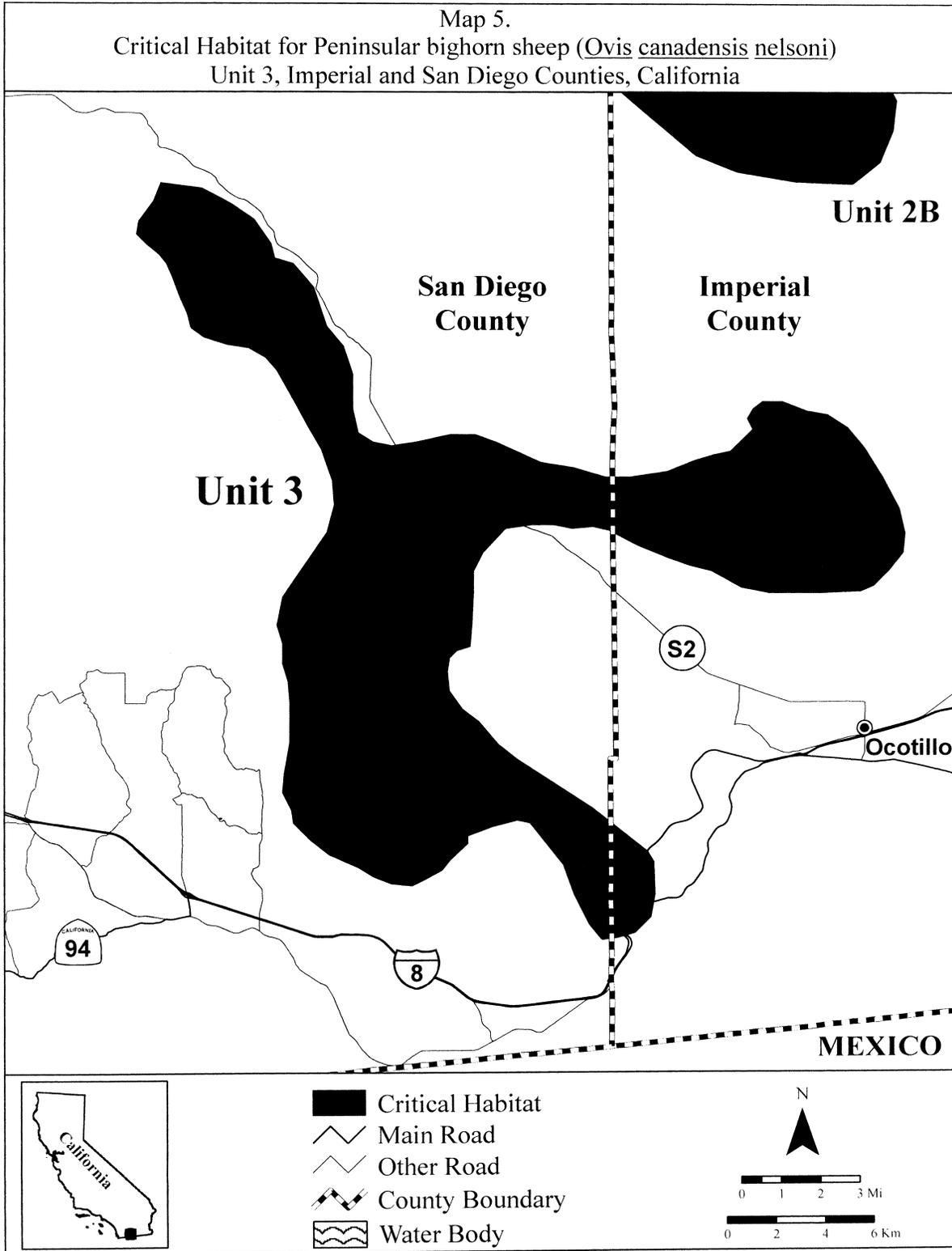
(NAD27) coordinates (E, N): 574159, 3634261; 574922, 3634108; 575915, 3634261; 577290, 3634566; 578359, 3634566; 579199, 3634261; 580039, 3633879; 581032, 3633421; 582406, 3633192; 583705, 3632810; 584697, 3632810; 586225, 3633039; 587370, 3633497; 588134, 3633726; 588821, 3633879; 589738, 3634795; 589508, 3635253; 589738, 3635635; 590119, 3635941; 590959, 3635941; 591952, 3635559; 592792, 3635406; 593632, 3634871; 594320, 3634031; 595083, 3632810; 595771, 3631511; 596000, 3630519; 595923, 3629679; 595312, 3628915; 594702, 3628304; 594167, 3628075; 592411, 3627998; 591189,

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(ii) Note: Map of Unit 3, Carrizo Canyon (Map 5) follows:

BILLING CODE 4310-55-P



\* \* \* \* \*

Dated: September 28, 2007.

**Todd Willens,**

*Acting Assistant Secretary for Fish and  
Wildlife and Parks.*

[FR Doc. 07-4959 Filed 10-9-07; 8:45 am]

BILLING CODE 4310-55-C



# Federal Register

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**Wednesday,  
October 10, 2007**

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## **Part IV**

# **Environmental Protection Agency**

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**40 CFR Parts 141 and 142  
National Primary Drinking Water  
Regulations for Lead and Copper: Short-  
Term Regulatory Revisions and  
Clarifications; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 142**

[EPA-HQ-OW-2005-0034; FRL-8476-5]

RIN 2040-AE83

**National Primary Drinking Water Regulations for Lead and Copper: Short-Term Regulatory Revisions and Clarifications**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing seven targeted regulatory changes to the National Primary Drinking Water Regulations (NPDWR) for lead and copper. This final rule strengthens the implementation of the Lead and Copper Rule (LCR) in the following areas: monitoring, treatment processes, public education, customer awareness, and lead service line replacement. These changes provide more effective protection of public health by reducing exposure to lead in drinking water.

**DATES:** This final rule is effective on December 10, 2007.

The compliance date for all of this final rule's provisions is 180 days after promulgation except if by that date, the primacy State has not adopted this rule, in which case compliance with this final rule is required the earlier of either the State's adoption of the rule, or two years after December 10, 2007. For purposes of judicial review, this rule is promulgated as of October 10, 2007 as provided in 40 CFR 23.7.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2005-0034. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. 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 electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Water Docket, EPA Docket Center, 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 Water Docket is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries, contact Jeffrey Kempic, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-4880; e-mail address: [kempic.jeffrey@epa.gov](mailto:kempic.jeffrey@epa.gov). For regulatory inquiries, contact Eric Burneson, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-5250; e-mail address: [burneson.eric@epa.gov](mailto:burneson.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

Entities potentially affected by the Lead and Copper Rule Short-Term Regulatory Revisions final rulemaking are public water systems (PWSs) that are classified as either community water systems (CWSs) or non-transient non-community water systems (NTNCWSs). Regulated categories and entities include:

Category	Examples of regulated entities
Industry .....	Privately-owned CWSs and NTNCWSs.
State, Tribal, and local governments.	Publicly-owned CWSs and NTNCWSs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of "public water system" in § 141.2, the section entitled "Coverage" of § 141.3, and the applicability criteria in § 141.80(a) of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Abbreviations Used in This Document*

- AL: Action Level
- CCR: Consumer Confidence Report
- CFR: Code of Federal Regulations
- CWS: Community Water System
- CWSS: Community Water System Survey
- EPA: Environmental Protection Agency

- ICR: Information Collection Request
- LCR: Lead and Copper Rule
- LCRMR: Lead and Copper Rule Minor Revisions
- LSL: Lead Service Line
- LSLR: Lead Service Line Replacement
- LT2: Long Term 2 Enhanced Surface Water Treatment Rule
- MCLG: Maximum Contaminant Level Goal
- MDL: Method Detection Limit
- NDWAC: National Drinking Water Advisory Council
- NPDWR: National Primary Drinking Water Regulation
- NTNCWS: Non-Transient Non-Community Water System
- O&M: Operation and Maintenance costs
- OMB: Office of Management and Budget
- PE: Public Education
- POE: Point-of-Entry Devices
- POU: Point-of-Use Devices
- RFA: Regulatory Flexibility Act
- RIA: Regulatory Impact Analysis
- SBA: Small Business Administration
- SDWA: Safe Drinking Water Act
- SDWIS/FED: Safe Drinking Water Information System, Federal Version
- UMRA: Unfunded Mandates Reform Act

*C. Table of Contents*

- I. Background
  - A. What Is the Statutory Authority for the Lead and Copper Rule?
  - B. What Is the Regulatory History of the Lead and Copper Rule?
  - C. Why Is EPA Promulgating the LCR Short-Term Regulatory Revisions?
- II. What Do the LCR Short-Term Regulatory Revisions Require?
  - A. Minimum Number of Samples Required
  - B. Definitions for Compliance and Monitoring Periods
  - C. Reduced Monitoring Criteria
  - D. Advanced Notification and Approval Requirements for Water Systems That Intend to Make Any Long-Term Change in Water Treatment or Add a New Source of Water
  - E. Requirements to Provide a Consumer Notice of Lead Tap Water Monitoring Results to Consumers Who Occupy Homes or Buildings That Are Tested for Lead
  - F. Public Education Requirements
  - G. Reevaluation of Lead Service Lines Deemed Replaced Through Testing
- III. Discussion of the Lead and Copper Rule Short-Term Regulatory Revisions and Clarifications
  - A. Minimum Number of Samples Required
    - 1. How Is EPA Revising This Rule?
    - 2. What Is EPA's Rationale for the Minimum Number of Samples Required Revisions?
    - 3. What Were the Key Issues Raised by Commenters on the Minimum Number of Samples Required Revisions and EPA's Response to These Issues?
  - B. Definitions for Compliance and Monitoring Periods
    - 1. How Is EPA Revising This Rule?
    - 2. What Is EPA's Rationale for the Compliance and Monitoring Period Definition Revisions?
    - 3. What Were the Key Issues Raised by Commenters on the Compliance and

- Monitoring Period Definition Revisions and EPA's Response to These Issues?
- C. Reduced Monitoring Criteria
1. How Is EPA Revising This Rule?
  2. What Is EPA's Rationale for the Reduced Monitoring Revisions?
  3. What Were the Key Issues Raised By Commenters on the Reduced Monitoring Revisions and EPA's Response to These Issues?
- D. Advanced Notification and Approval Requirement for Water Systems That Intend to Make Any Long-Term Changes in Water Treatment or Add a New Source of Water
1. How Is EPA Revising This Rule?
  2. What Is EPA's Rationale for Advanced Notification and Approval of Long-Term Treatment Changes or Addition of New Source Revisions?
  3. What Were the Key Issues Raised by Commenters on the Advanced Notification and Approval of Long-Term Treatment Changes or Addition of New Source Revisions and EPA's Response to These Issues?
- E. Requirements to Provide a Consumer Notice of Lead Tap Water Monitoring Results to Consumers Who Occupy Homes or Buildings That Are Tested for Lead
1. How Is EPA Revising This Rule?
  2. What Is EPA's Rationale for the Consumer Notice of Lead Tap Water Monitoring Results Revisions?
  3. What Were the Key Issues Raised by Commenters on the Consumer Notice of Lead Tap Water Monitoring Results Revisions and EPA's Response to These Issues?
- F. Public Education Requirements
1. Message Content
    - a. How Is EPA Revising the Message Content?
    - b. What Is EPA's Rationale for the Message Content Revisions?
    - c. What Were the Key Issues Raised by Commenters on the Message Content Revisions and EPA's Response to These Issues?
  2. Delivery
    - a. How Is EPA Revising the Delivery Requirements?
    - b. What Is EPA's Rationale for the Delivery Requirements Revisions?
    - c. What Were the Key Issues Raised by Commenters on the Delivery Requirements Revisions and EPA's Response to These Issues?
  3. Timing
    - a. How Is EPA Revising the Timing Provisions of the Rule?
    - b. What Is EPA's Rationale for Revising the Timing Provisions of the Rule?
    - c. What Were the Key Issues Raised by Commenters on the Timing Provisions and EPA's Response to These Issues?
  4. Consumer Confidence Reports
    - a. How Is EPA Revising CCR Requirements?
    - b. What Is EPA's Rationale for the CCR Revisions?
    - c. What Were the Key Issues Raised by Commenters on the CCR Requirements Revisions and EPA's Response to These Issues?
- G. Reevaluation of Lead Service Lines Deemed Replaced Through Testing
1. How Is EPA Revising This Rule?
  2. What Is EPA's Rationale for the Reevaluation of Lead Service Lines Revisions?
  3. What Were the Key Issues Raised By Commenters on the Reevaluation of Lead Service Lines Revisions and EPA's Response to These Issues?
- H. Other Issues Related to the Lead and Copper Rule
1. How Is EPA Revising This Rule?
  2. What Is EPA's Rationale for Not Including Any of These Other Issues in the Final Rule Revisions?
  3. What Were the Key Issues Raised by Commenters on These Other Issues and EPA's Response to These Issues?
- I. Compliance Dates
1. What Are the New Compliance Dates for This Rule?
  2. What Is EPA's Rationale for the Compliance Dates?
  3. What Were the Key Issues Raised by Commenters on the Compliance Dates and EPA's Response to These Issues?
- J. State Implementation
1. How Do These Regulatory Revisions Affect A State's Primacy Program?
  2. What Does a State Have to Do to Apply?
  3. How Are Tribes Affected?
- IV. Economic Analysis
- A. Direct Costs
  - B. Overall Cost Methodologies and Assumptions
  - C. Direct Costs Associated With Regulatory Change III.A
  - D. Direct Costs Associated With Regulatory Change III.B
  - E. Direct Costs Associated With Regulatory Change III.C
  - F. Direct Costs Associated With Regulatory Change III.D
  - G. Direct Costs Associated With Regulatory Change III.E
  - H. Direct Costs Associated With Regulatory Change III.F
  - I. Direct Costs Associated With Regulatory Change III.G
  - J. Summary of National Average Annual Direct Costs
  - K. Total Upfront Costs to Review and Implement Regulatory Changes
  - L. Indirect Costs
  - M. Benefits
  - N. What Were the Key Issues Raised by Commenters on the State and System Burden Estimates (Economic Analysis) and EPA's Response to These Issues?
- V. Statutory and Executive Order Requirements
- A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That

- Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
  - J. Congressional Review Act
- VI. References

## I. Background

### A. What Is the Statutory Authority for the Lead and Copper Rule?

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.) requires EPA to establish maximum contaminant level goals (MCLGs) and National Primary Drinking Water Regulations (NPDWRs) for contaminants that may have an adverse effect on the health of persons, may occur in public water systems at a frequency and level of public concern, and in the sole judgment of the Administrator, regulation of the contaminant would present a meaningful opportunity for health risk reduction for persons served by public water systems (section 1412(b)(1)(A)). The 1986 amendments to SDWA established a list of 83 contaminants for which EPA is to develop MCLGs and NPDWRs, which included lead and copper. The 1991 NPDWR for Lead and Copper (56 FR 26460, U.S. EPA, 1991a) fulfilled the requirements of the 1986 SDWA amendments with respect to lead and copper.

### B. What Is the Regulatory History of the Lead and Copper Rule?

EPA promulgated maximum contaminant level goals (MCLGs) and NPDWRs for lead and copper (LCR) on June 7, 1991. The goal of the LCR is to provide maximum human health protection by reducing lead and copper levels at consumers' taps to as close to the MCLGs as is feasible. To accomplish this goal, the LCR establishes requirements for community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) to optimize corrosion control and conduct periodic monitoring. Systems are required to perform public education when there are action level exceedances at more than 10 percent of the taps that are sampled, treat source water if it contributes significantly to lead and copper levels at the tap, and replace lead service lines in the distribution system if the lead level at the tap continues to exceed the action level after optimal corrosion control has been installed. EPA proposed minor revisions to the LCR (LCRMR) in 1996 (60 FR 16348, U.S. EPA 1996a) and finalized these minor revisions on January 12, 2000 (65 FR 1950, U.S. EPA 2000b). These minor revisions streamlined the requirements of the LCR, promoted consistent national

implementation, and reduced the reporting burden to affected entities. These minor revisions also addressed the areas of optimal corrosion control demonstration, lead service line replacement requirements, public education requirements, monitoring requirements, analytical methods, reporting and recordkeeping requirements, and special privacy considerations. The LCRMR did not change the action level, MCLG, or the rule's basic requirements.

### *C. Why Is EPA Promulgating the LCR Short-Term Regulatory Revisions?*

The purpose of the Lead and Copper Rule (LCR) is to protect populations from exposure to lead and copper in drinking water and reduce potential health risks associated with lead and copper. In 2004, the District of Columbia experienced incidences of elevated drinking water lead levels, which prompted EPA to initiate a comprehensive national review of the LCR to evaluate the implementation and effectiveness of the rule. The purpose of the review was to determine whether elevated drinking water lead levels were a national problem; if a large percentage of the population received water that exceeded the lead action level; if a significant number of systems failed to meet the action level; how well the existing LCR worked to reduce drinking water lead levels; and if the regulation is currently being effectively implemented, especially with respect to monitoring and public education requirements. EPA's comprehensive review consisted of several elements, including a series of workshops designed to solicit issues, comments, and suggestions from stakeholders on particular issues; a review of monitoring data to evaluate the effectiveness of the LCR; and a review of the LCR implementation by States and water utilities. As a result of this multi-part review, EPA identified seven targeted rule changes intended to strengthen the implementation of the LCR in the areas of monitoring, customer awareness, and lead service line replacement in the short-term. The short-term changes finalized in this action are expected to ensure and enhance protection of public health by reducing exposure to lead in drinking water. This final rule does not amend the portion of the regulations related to copper, however provisions addressing copper will be considered for future revisions to the rule. EPA will propose any future regulatory changes under a separate regulatory action.

## **II. What Do the LCR Short-Term Regulatory Revisions Require?**

### *A. Minimum Number of Samples Required*

#### 1. Proposed Revision

The proposed LCR Short-Term Regulatory Revisions (71 FR 40828, July 18, 2006, U.S. EPA 2006a) clarified and maintained that five samples per monitoring period is the minimum number of samples required for systems serving 100 people or fewer.

#### 2. Final Revision

EPA's final revision to the minimum number of samples requirement adds a provision that gives States the discretion to allow water systems with fewer than five taps for human consumption to collect one sample per tap. Under this alternate sampling schedule, the sample with the highest test result will be compared to the action level to determine compliance. While fewer samples may be taken, comparing the single highest level provides public health protection since it does not allow water systems to ignore a potential problem by taking repeat samples at taps that have low lead results when they get a high sample result. See section III.A for more information on this regulatory revision and also for EPA's response to significant public comments on the proposal. A complete response to all comments on this rule is found in the Lead and Copper Docket at [www.regulations.gov](http://www.regulations.gov).

### *B. Definitions for Compliance and Monitoring Periods*

#### 1. Proposed Revision

EPA's proposed revision clarified the "compliance period" as the three year calendar period as defined at § 141.2 and the "monitoring period" as the specific period in which water systems must conduct required monitoring. EPA also proposed to revise several sections of the LCR to more precisely define when the "start date" for the compliance calendar begins. EPA also proposed to clarify that systems on reduced monitoring schedules must monitor during four consecutive months, and systems on triennial monitoring must monitor once every 3 calendar years, with a similar requirement for small systems with a monitoring waiver to ensure they monitor every 9 years.

#### 2. Final Revision

EPA is maintaining the revision as proposed for defining the compliance and monitoring periods. Based on commenter concerns with implementing

the clarified definition of the term "monitoring period," EPA is allowing States flexibility in extending the timeframe to complete public education activities after an action level (AL) exceedance. For more information and EPA's response to significant public comments, see section III.B of this notice.

### *C. Reduced Monitoring Criteria*

#### 1. Proposed Revision

EPA proposed a revision that would disallow water systems that exceeded the lead action level from initiating or remaining on a reduced lead and copper monitoring schedule based solely on the results of their water quality parameter (WQP) monitoring. This proposed change would modify the reduced monitoring provisions at § 141.86(d)(4).

#### 2. Final Revision

EPA is maintaining the revision as proposed for reduced monitoring criteria. For more information and EPA's response to significant public comments, see section III.C of this notice.

### *D. Advanced Notification and Approval Requirements for Water Systems That Intend To Make Any Long-Term Change in Water Treatment or Add a New Source of Water*

#### 1. Proposed Revision

EPA proposed to amend several sections of the *Code of Federal Regulations (CFR)* to require water systems to obtain prior approval by the State to add a new source of water or change a treatment process prior to implementation.

#### 2. Final Revision

EPA is maintaining the revision as proposed for advanced notification and approval requirements with a slight modification to clarify EPA's intention. In finalizing this regulatory revision, EPA is clarifying the requirements for advance notification and approval to apply to those treatment changes that would have *long-term* impacts on water quality. EPA has provided examples of long-term treatment changes in § 141.90(a)(3) of this final rule. EPA believes that this clarification will prevent water systems from notifying the State and requesting approval for changes that are operational in nature or made on a daily basis. See section III.D of this notice for more information regarding this regulatory revision and EPA's response to significant public comments on this issue.

*E. Requirements To Provide a Consumer Notice of Lead Tap Water Monitoring Results to Consumers Who Occupy Homes or Buildings That Are Tested for Lead*

1. Proposed Revision

EPA proposed revisions to require water systems to notify consumers in homes or buildings tested for lead of their results. Specifically, systems must provide written notification to household occupants within 30 days after the water system learns the results for samples collected from that household and post or otherwise notify occupants of non-residential buildings of the results of lead testing. EPA also indicated that the consumer notification must contain an explanation of lead health effects, list steps consumers can take to reduce lead drinking water exposure, provide utility contact information, and include the lead maximum contaminant level goal or MCLG, lead action level, and definitions of each from § 141.153(c)(1).

2. Final Revision

EPA is maintaining the revision as proposed to consumer notification language. EPA is also adding language to § 141.85(d)(4), which provides an example of an alternative mechanism of consumer notification for NTNCWSs. For more information and EPA's response to significant public comments, see section III.E of this notice.

*F. Public Education Requirements*

1. Proposed Revision

EPA proposed to revise the public education requirements of the LCR in the areas of message content, delivery requirements, and the Consumer Confidence Report (CCR). The proposed revisions would modify the mandatory language in public education to make it shorter and easier to understand; require water systems to deliver material to new organizations, engage in new outreach activities, post lead information on water bills, issue two press releases during periods of lead action level exceedance; and modify the CCR such that all CWSs with lead detects above the method detection limit (MDL) of 0.001 mg/L would have to include information about the risks of lead in drinking water in the CCR on a regular basis.

2. Final Revision

EPA is maintaining the proposed revisions to the public education requirements, but is adding a provision that water systems must submit public education language for State review and

approval at the option of the State. Generally, EPA is retaining the delivery requirements as proposed, but has made modifications to address challenges with water system jurisdiction and delivery of materials. EPA is now requiring that all systems have a simple informational statement about lead in their CCR because the actual level of lead exposure for drinking water varies between individual homes and levels detected by the system for compliance and would not necessarily reflect the risk faced by consumers. EPA also realizes there are situations where the most vulnerable populations may be exposed to elevated levels of lead for many months before being notified. In addition, this simplifies compliance tracking and enforcement of this requirement. See section III.F of this notice for more information on the final public education requirements and for EPA's responses to significant public comments.

*G. Reevaluation of Lead Service Lines Deemed Replaced Through Testing*

1. Proposed Revision

EPA proposed to require water systems to reevaluate lead service lines classified as "replaced" through testing if they resume lead service line replacement programs.

2. Final Revision

EPA is maintaining the revision as proposed for reevaluation of lead service line replacement, but is adding a provision to allow an alternative time schedule for systems that have completed a 15-year replacement program before re-exceeding the lead action level. For more information and EPA's response to significant public comments, see section III.G of this notice.

**III. Discussion of the Lead and Copper Rule Short-Term Regulatory Revisions and Clarifications**

*A. Minimum Number of Samples Required*

1. How Is EPA Revising This Rule?

EPA is clarifying the minimum sampling requirement for small water systems that have fewer than five taps by making revisions to § 141.86(c). These revisions include a clarification that the term "taps" means "taps that can be used for human consumption," as opposed to outlets such as hose bibs or taps at utility sinks. In addition, the revisions clarify what a system must do to meet the minimum five number of samples requirement when the system physically has fewer than five taps. In

this situation, the water system must sample all taps at least once and then take repeat samples on different days until a total of five samples are obtained.

EPA is, however, adding a provision to § 141.86(c) that gives States the discretion to allow water systems that have fewer than five taps, to collect one sample per tap that can be used for human consumption. To qualify for this provision, the water system must make a request to the State in writing and the State must approve the request in writing or by onsite verification. Under this alternate sampling schedule for all water systems collecting fewer than five samples, the sample with the highest test result will be compared to the lead action level to determine compliance. If any sample result is above the action level, the system is deemed to be exceeding the action level and must complete compliance actions (e.g., public education, corrosion control treatment, and lead service line replacement). EPA is adding regulatory text to § 141.80 to describe this new compliance determination. The alternate sampling schedule may also be applicable for water systems that are on reduced monitoring and EPA is adding a provision to § 141.86(d)(4)(i) for those systems. The provision allows the water system to reduce sampling frequency to once per year, but in no case can the number of samples required be reduced below the minimum of one sample per tap that can be used for human consumption.

2. What Is EPA's Rationale for the Minimum Number of Samples Required Revisions?

In the original Lead and Copper Rule of 1991, the term "site" is used to refer to the number of samples collected, and there has been confusion as to whether "site" refers to taps or physical locations. EPA is clarifying that sampling "sites" refer to "taps that can be used for human consumption." The phrase "that can be used for human consumption," is being added to the regulations to ensure that samples are taken from taps which would pose the highest risk for exposure to lead, rather than from taps that are not typically used for human consumption.

EPA is also making clarifications for water systems that have fewer than five taps that can be used for human consumption. In the proposal for this rule, EPA maintained that systems must take a minimum of five samples in order to adequately capture the variability of lead levels and that it was more cost effective for small systems to take more samples than install corrosion control or

source treatment based on a small pool of samples taken (71 FR 40828 at 40831, U.S. EPA, 2006a). EPA is maintaining that systems must take a minimum of five samples as part of this rule. However, EPA is also giving States the discretion to offer an alternative requirement, on which it requested comment in the proposed rule, described as follows.

EPA requested comment on an alternative sampling requirement for NTNCWS with fewer than five taps that can be used for human consumption. The water systems would be required to sample 100 percent of the taps that can be used for human consumption. Under the alternative sampling provision, systems collecting fewer than five samples will compare the sample with the highest result to the action level to determine if they must complete compliance actions such as public education, corrosion control treatment installation, and/or lead service line replacement. EPA believes that requiring systems to use the highest sample result to determine compliance is health protective because it does not allow water systems to take repeat samples at taps that have low levels of lead when they get a high sample result. In addition, the alternative sampling schedule alleviates the cost burden associated with taking repeat samples. After evaluating comments, EPA has determined that the alternative sampling provision will also be made available to CWS with fewer than five taps for human consumption, such as washeterias in Alaska and Navajo hauling points.

### 3. What Were the Key Issues Raised by Commenters on the Minimum Number of Samples Required Revisions and EPA's Response to These Issues?

The majority of commenters did not agree with EPA's proposal to require water systems with fewer than five taps to collect repeat samples from the same taps and they supported the idea of allowing small water systems to sample 100 percent of taps available for human consumption. Commenters stated that repeat sampling would be a cost burden imposed on the smallest sized systems. Some commenters also stated that repeat sampling was an unfair requirement for small systems since large systems are not required to take repeat samples or sample all of their available taps for compliance. To address these concerns, EPA is giving discretion to the States to allow small systems with fewer than five taps to take fewer than five samples. EPA stresses, however, that the requirement is not less stringent, since systems collecting

fewer than 5 samples must compare the sample with the highest concentration to the action level. By taking fewer than 5 samples, systems with fewer than 5 taps are giving up the opportunity to take repeat samples at taps with low lead results.

Two States supported not changing the minimum number of samples requirement because of the administrative burden of verifying available taps. Although other commenters believed that there was no better statistical representation than sampling 100 percent of taps in a system, one of the States stated that it is statistically "risky" to base compliance on a single sample since lead levels vary greatly even with corrosion control treatment in place. The other State that did not favor the alternative suggested that EPA offer States discretion to allow the alternative of sampling 100 percent of taps. EPA agrees with the State and has made changes in this rule to reflect this suggestion. Because the alternative is not mandatory, those States which do not agree with the provision are not required to allow water systems to utilize the alternative sampling schedule.

In their comments, a few States indicated that small systems with fewer than 5 taps are "primarily" NTNCWSs, thus indicating that some are CWSs. The commenters who supported this approach did not provide any reason for limiting this to NTNCWSs and in fact, the reasons for supporting the alternative would apply equally well to any small system with fewer than 5 taps. As a result, States can approve the alternative monitoring for both CWSs and NTNCWSs with fewer than five taps. In expanding this alternative monitoring to CWSs, EPA emphasizes that this is only allowed for systems such as washeterias in Alaska and Navajo hauling points, where there are physically fewer than five taps within the system. Small CWSs with more than five taps cannot use this alternative monitoring to take fewer than the required number of samples pursuant to the table in § 141.86(c).

### *B. Definitions for Compliance and Monitoring Periods*

#### 1. How Is EPA Revising This Rule?

EPA is making a number of clarifications throughout the LCR to clearly explain when compliance and monitoring periods begin and end. In addition, the Agency is also clarifying the timing of actions following a lead or copper action level exceedance and the

timing of monitoring activities with regard to reduced monitoring schedules.

EPA is clarifying that the term "compliance period" is a three-year calendar year period within a nine-year compliance cycle, which is consistent with the definition in § 141.2. EPA is also defining the term "monitoring period" as the specific time period during which a water system must perform the required monitoring (e.g., June–September).

In this case and consistent with these definitions, systems will be deemed to be exceeding the action level as of the date on which the monitoring period ended (i.e., on September 30). EPA is modifying several sections of the LCR that describe the timing of actions after an action level exceedance, including corrosion control treatment steps in § 141.81(e), source water monitoring and treatment recommendations to the State in § 141.83(a), lead service line replacement in § 141.84(b)(1), public education for community water systems in § 141.85(b)(2) and for non-transient non-community water systems in § 141.85(b)(4), source water monitoring requirements in § 141.88(b) and (d), and the reporting requirements in § 141.90(a) and (e).

Also, for systems on reduced monitoring, the monitoring period is from June to September or some other consecutive four-month period during normal operation when the highest lead levels are most likely to occur. EPA has modified the reduced monitoring provisions in § 141.86(d)(4)(iv)(A) to reflect this requirement. In addition, the Agency is clarifying when a system may begin reduced monitoring in § 141.86(d)(4)(i) and (ii), as well as when a system on reduced monitoring must resume standard monitoring according to § 141.86(d)(4)(vi)(B). In addition, the timing for water quality parameter monitoring is now more clearly defined in § 141.87(d) and (e).

Lastly, systems on triennial monitoring must conduct their monitoring during a four-month consecutive period every three years and are therefore not allowed to monitor during Year 1 of the first compliance period and during Year 3 of the second compliance period. The Agency is modifying the reduced monitoring provisions for lead and copper sampling in § 141.86(d)(4)(iii), for water quality parameter sampling in § 141.87(e)(2)(ii), and for triennial source water monitoring in § 141.88(d)(1)(i). EPA is making a similar change for small systems with monitoring waivers to ensure that they monitor every nine years, which modifies §§ 141.86(g)(4)(i) and 141.88(e).

## 2. What Is EPA's Rationale for the Compliance and Monitoring Period Definition Revisions?

EPA is making revisions regarding monitoring and compliance periods in order to clarify the meaning of these terms, to address the issues associated with the timing of actions following a lead or copper action level exceedance, and to address the timing of samples that should be taken under reduced monitoring schedules.

Under the previous regulations, there was uncertainty about when a system was determined to have exceeded the action level and the corresponding deadlines for completing corrosion control studies, lead service line replacement and public education (e.g., end of December or the end of September for systems monitoring June to September). The changes made in this final rule clarify that a system is deemed to be exceeding the action level on the last day of the monitoring period in which the exceedance occurred.

The clarified timing of actions following a lead or copper action level exceedance is also intended to ensure that the system and the State begin actions to reduce exposure (e.g., corrosion control, public education, and lead service line replacement) as soon as possible. The deadlines for completing these follow-up activities will be calculated from the date the system is determined to be exceeding the action level (i.e., end of the monitoring period), with some discretion for States to extend the deadline for completing public education activities on a case-by-case basis.

The timing of samples that should be taken for systems on reduced monitoring schedules ensures that States and systems have an accurate assessment of the effectiveness of corrosion control. This relates to both the duration and frequency of monitoring. Under this requirement, samples must be taken during four consecutive months. For most systems, this will mean monitoring during June to September during one of the three years in the three-year compliance period. For systems where the State has approved some other 4-month period, all samples must be taken during that 4-month period. Sampling during a short, fixed time period will allow the system to more accurately evaluate the effectiveness of the corrosion control treatment than will collecting the same number of samples over a 3-year period. In addition, systems on triennial monitoring are also not allowed to monitor during Year 1 of the first compliance period and during Year 3 of

the second compliance period because that would allow five years to pass between monitoring rounds. Similarly, systems on nine-year monitoring waivers are not allowed to monitor during Year 1 of the first nine-year period and Year 9 of the second nine-year period.

## 3. What Were the Key Issues Raised by Commenters on the Compliance and Monitoring Period Definition Revisions and EPA's Response to These Issues?

Most commenters agreed with the definitions of monitoring and compliance periods in the proposed revisions, but some had implementation concerns. Two commenters agreed that four months is reasonable for monitoring activities, including distribution, collection, and initiation of lab processing. However, several expressed concern that the clock for compliance actions should not start until compliance has been determined after the end of the monitoring period or that States should be given flexibility to alter compliance action schedules. In response to these commenters, EPA is modifying § 141.85(b)(3)(iv) to allow States flexibility in extending the timeframe on a case-by-case basis to complete public education activities after an action level exceedance. However, systems must start these activities and States must approve in writing any deadline extension within 60 days of the end of the monitoring period in which the exceedance occurred. This ensures that the system and the State begin public education actions to reduce exposure as soon as possible, but allows these actions to continue past the 60-day timeframe as needed for effective implementation. States should still make every effort to get public water systems to complete their public education activities within 60 days after the end of the monitoring period.

In addition, one commenter indicated that under the current version of the LCR, small and medium systems exceeding the action level must perform water quality parameter monitoring within the same monitoring period. The commenter then stated that the systems may not obtain their sample results and identify that they have exceeded the action level until after the monitoring period has ended. As a result, this requirement effectively sets systems up for water quality parameter monitoring violations. In the 1991 LCR, EPA recognized that many factors influence water corrosivity and because of this, decided to require small and medium water systems detecting lead and/or copper above the action levels to

measure for water quality parameters (56 FR 26460 at 26526, U.S. EPA, 1991a). However, EPA recognizes that under the monitoring period clarifications made in this final rule, systems on reduced monitoring that exceed the action level will most likely not be taking water quality parameters and would have automatically incurred a violation based on the requirement in § 141.87(d). The end of the 6-month period in which small and medium water systems must sample for water quality parameters would have corresponded to the end of the 4-month monitoring period in which they must sample for lead and copper under § 141.86(d)(4). For example, a system that takes lead and copper tap samples between June and September and exceeds the action level, would only have until the end of September to take all of their water quality parameters. The system would most likely not be aware of the exceedance until the end or after the end of the monitoring period and would incur a violation for not having already completed water quality parameter monitoring. Therefore, EPA is revising the requirement in § 141.87(d) to require the start of the 6-month period in which the system must take water quality parameters to correspond with the start of the 4-month monitoring period in which they must sample for lead and copper under § 141.86(d)(4). This revision will allow small and medium systems on reduced monitoring that exceed the action level two months to take water quality parameter samples after the end of the 4-month monitoring period in which they had to take lead and copper tap samples. For example, a system that takes lead and copper tap samples between June and September and exceeds the action level, would have until the end of November to take water quality parameter samples. This provision is intended primarily for systems that are not aware of the exceedance until the end of the lead and copper monitoring period. Those systems that are aware of the action level exceedance earlier in the 4-month lead and copper monitoring period should conduct their monitoring once they become aware of the exceedance to better capture the water quality conditions at the time of the exceedance.

### C. Reduced Monitoring Criteria

#### 1. How Is EPA Revising This Rule?

EPA is no longer allowing water systems that exceed the lead action level to initiate or remain on a reduced lead and copper monitoring schedule based solely on the results of their water

quality parameter monitoring. This change modifies the reduced monitoring provisions in § 141.86(d)(4), specifically subsections (ii), (iii) and (iv). These sections discuss when small and large water systems may reduce the required number of lead and copper samples in accordance with paragraph (c) of § 141.86.

## 2. What Is EPA's Rationale for the Reduced Monitoring Revisions?

EPA is making this change because the Agency believes that reduced monitoring should only be permitted where it has been demonstrated that corrosion control treatment is both effective and reliable. Compliance with water quality parameters alone may not always indicate that corrosion control is effective.

Monitoring lead levels is particularly critical for systems that are exceeding the lead action level for several reasons. First, it will assist systems in evaluating the effectiveness of corrosion control treatment. The rule previously allowed systems eligibility for reduced monitoring even if they exceeded the lead or copper action level if they could demonstrate their corrosion control treatment was effective by meeting the State-designated water quality parameters. However, as shown by the events in the District of Columbia and as stated above, compliance with water quality parameters alone may not always indicate that corrosion control is effective, especially after a treatment or source change. Continued exceedance of the lead action level may indicate that a particular method of corrosion control treatment is not effective for a particular system and knowledge of this continued exceedance may result in the system implementing an alternative and more effective corrosion control treatment strategy. In addition, a system must know if it continues to exceed the lead action level after installing corrosion control treatment in order to determine how long its lead service line replacement requirements remain in effect. Continued understanding of the range of lead levels detected within the system can also help the system implement an effective public education program.

Second, continued monitoring will allow primacy agencies to gain a more accurate picture of lead levels in drinking water in their States. Many systems within States share water sources, have similar treatment technologies, and have similar materials in their distribution systems. States and other primacy agencies with knowledge of effective corrosion control for one system may be able to aid other systems

within their jurisdiction in lowering lead levels in water. Having a more accurate characterization of lead levels in drinking water that is exceeding the action level will allow States and systems to better inform consumers and, thereby, create greater confidence in their efforts to reduce lead levels.

## 3. What Were the Key Issues Raised By Commenters on the Reduced Monitoring Revisions and EPA's Response to These Issues?

The majority of commenters agreed with EPA that a system must remain under the action level to continue operating on reduced monitoring. States and others supported the current requirement to allow systems that exceed the copper action level to continue on reduced monitoring if water quality parameters are met. Therefore, the Agency is not making any changes that differ from the proposal with regard to this provision.

Some commenters did feel that systems that exceed the copper action level should not be allowed to reduce their monitoring requirements. As stated in the proposal, EPA did consider requiring that all systems meet both the lead and the copper action levels as criteria for eligibility for reduced monitoring. However, the Agency determined that copper issues should be considered as part of longer term revisions to the rule. EPA also believes that adding the copper action level requirement could impose a large monitoring increase on some small and medium systems that are currently limited in their ability to reduce copper below the action level due to their source water (e.g., high alkalinity ground waters). For these systems, the States currently have flexibility in the existing rule to limit systems from proceeding to reduced lead and copper tap monitoring. Under §§ 141.86(d)(4)(ii) and 141.86(d)(4)(iii), a State may review and revise its determination to allow a system to proceed with reduced monitoring when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available. Therefore, the Agency is not requiring that systems that meet the lead action level and water quality parameter requirements must also meet the copper action level to be eligible for reduced lead and copper monitoring.

Other commenters stated that systems which make treatment changes or add new sources of water should also be required to monitor for lead and copper for two consecutive 6-month periods. Currently, § 141.86(d)(4)(vii) provides

States authority to require systems that either add a new source of water or change any water treatment to resume standard monitoring. In addition, §§ 141.81(b)(3)(iii) and 141.86(g)(4)(iii) allows the State to require any system adding a new source of water or changing any water treatment to conduct additional monitoring. EPA is not changing these requirements as part of this rule. EPA believes States should continue to have the flexibility to require systems to resume standard monitoring after making a treatment change or adding a new source of water that could impact corrosion control.

## D. Advanced Notification and Approval Requirement for Water Systems That Intend To Make Any Long-term Change in Water Treatment or Add a New Source of Water

### 1. How Is EPA Revising This Rule?

This final rule amends §§ 141.81(b)(3)(iii), 141.86(d)(4)(vii), 141.86(g)(4)(iii), and 141.90(a)(3) to require water systems to obtain prior approval by the State to add a new source of water or make any long-term change in water treatment process prior to implementation. The final regulatory language allows as much time as needed for water systems and States to consult before making these changes. To assist the State in making its determinations, EPA published a March 2007 *Simultaneous Compliance Guidance Manual for the Long Term 2 and Stage 2 DBP Rules* (US EPA, 2007b). This document will be an aid to the State in identifying those situations where optimal corrosion control can be affected by long-term changes in treatment or source water.

### 2. What Is EPA's Rationale for Advanced Notification and Approval of Long-Term Treatment Changes or Addition of New Source Revisions?

Previously, the rule required that systems notify the State within 60 days of making a change in treatment or adding a new source. EPA proposed that systems be required to provide advance notification of any change in treatment or addition of a new source and receive approval from the State prior to making the change. The final rule requires systems to provide advanced notification of any long-term change in treatment or addition of a new source and receive approval from the State before implementing the change. When a water system makes long-term changes to its treatment process or adds a new source of water, it can unintentionally affect the system's optimal corrosion control. EPA believes that State review

and approval of changes in long-term treatment or addition of a new source will provide an opportunity to minimize any potential impacts on optimal corrosion control.

For this final rule, EPA has clarified the intent of this provision by stating that it applies to long-term changes in treatment. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants (e.g., chlorine to chloramines), switching coagulants (e.g., alum to ferric chloride), and switching corrosion inhibitor products (e.g., orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

### 3. What Were the Key Issues Raised by Commenters on the Advance Notification and Approval of Long-Term Treatment Changes or Addition of New Source Revisions and EPA's Response to These Issues?

Many commenters supported the concept of advance notification and approval of treatment changes that could affect optimal corrosion control, but were concerned that the rule language as proposed was too broad and could include daily operational changes. Commenters were concerned that review and approval of daily changes that are dictated by the raw water quality could not be done in a timely manner and could be detrimental to public health if they were covered by the advance notification and approval requirement. It was not EPA's intention to include these daily operational activities. In response, EPA has revised the final rule to require advance notification and State approval of long-term treatment changes or addition of new source. Daily dose fluctuations due to changes in raw water quality would not be considered a long-term treatment change and would not require advance notification and State approval.

EPA requested comment on whether it should revise the existing rule language on "addition of new source" to "source change," but did not propose to make this change. Many commenters stated that revising the rule to cover any source change would be too prescriptive and that this could also include daily changes. Source changes occur on a daily basis due to changes in demand

and commenters expressed concern that State review and approval of these changes could not be done in a timely manner and therefore could be detrimental to public health. EPA has retained the language of "addition of new source" in the final rule rather than use the term "source change." EPA believes that it would be difficult to define a long-term source change because the source mixture can constantly change due to demand or changes in availability of sources. EPA discussed several scenarios in the proposed rule, including switching from 100% surface water to 100% ground water, switching from 100% surface water to 50% ground water and 50% surface water, and a change in proportion of moving from 75% ground water and 25% surface water to 25% ground water and 75% surface water. EPA believes that the existing language "addition of new source" covers the first two scenarios. Notification and approval would not be necessary if the switch is repeated on an annual basis.

The optimal corrosion control treatment for systems with mixed sources (ground water and surface water) should consider the impact of changing the proportions. Section 141.87(a)(1)(i) states that the tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Both water source and water treatment methods can produce different finished water pH values or other critical water quality parameters. For example, if the finished water pH values from both the surface sources and ground water sources are very similar, then this can mitigate the impact of changing the proportions of the various sources. Systems with waters that have different finished pH values should consider monitoring at the representative sites in the distribution system after making a major change in the proportions of the sources (75% ground water to 25% ground water). EPA will provide guidance to help systems identify source water changes (such as changing the mixture) that could impact optimal corrosion control.

Some commenters stated that State approval of the treatment change or addition of a new source is not necessary and would delay changes needed by the system. EPA disagrees with these commenters. EPA believes that clarifying the revision to focus on long-term treatment changes will address concerns that this requirement

would affect a system's ability to address daily water quality treatment changes. State notification and approval of long-term treatment changes is important because these changes could adversely impact optimal corrosion control. As EPA noted in the proposed rule, this approach allows the State to evaluate the change prior to implementation and, if needed, to design a monitoring program to ensure that optimal corrosion control is maintained after the change. EPA expects that States will review and approve long-term treatment changes and additions of new sources expeditiously and will avoid unnecessary delays to long-term changes that are needed by the system.

### *E. Requirements To Provide a Consumer Notice of Lead Tap Water Monitoring Results to Consumers Who Occupy Homes or Buildings That Are Tested for Lead*

#### 1. How Is EPA Revising This Rule?

EPA is amending the public education requirements described in § 141.80(g) and is adding a new notification requirement to § 141.85(d) that will require water systems to provide consumers who occupy homes or buildings that are part of the utility's monitoring program with the testing results when their drinking water is tested for lead. EPA is also adding a reporting requirement to § 141.90(f) for systems to certify they have completed this new consumer notification requirement.

#### 2. What Is EPA's Rationale for the Consumer Notice of Lead Tap Water Monitoring Results Revisions?

Although some utilities may have provided customers with the results of analyses conducted to meet requirements of the regulations, utilities were not previously required by EPA to notify occupants of the lead levels found in their drinking water. While samples are primarily collected to evaluate the effectiveness of corrosion control or to evaluate the corrosivity of the utility's water across the entire service area, the results of lead monitoring can provide useful information to the occupants of the household from which the samples were taken. Occupants can evaluate the results of lead tests for their drinking water and use that information to inform any decisions they might make to take action to reduce their exposure to lead in drinking water.

### 3. What Were the Key Issues Raised by Commenters on the Consumer Notice of Lead Tap Water Monitoring Results Revisions and EPA's Response to These Issues?

EPA received a range of comments regarding the inclusion of the maximum contaminant level goal (MCLG) and the action level for lead, along with the definitions for these two terms from § 141.153(c) in the consumer notice of lead tap results. Some commenters stated that listing the MCLG was unnecessary and would be confusing. However, other commenters expressed that it was appropriate to include the MCLG and many commenters stated that there should be some reference to the action level. Some of these commenters stated that the consumer notice should just indicate whether the result was above or below the action level, while others stated that there should be an acknowledgment that the action level is not health-based. Still others wanted EPA to provide a level of lead that is a health concern along with information on how to interpret results.

EPA disagrees that the MCLG is unnecessary and would cause confusion, since the definition of the term in § 141.153(c)(1) clearly states that it is the level of a contaminant in drinking water below which there is no known or expected risk to health, allowing for a margin of safety. In 1991, EPA set the MCLG for lead as zero based on the following considerations: (1) The occurrence of a variety of low level health effects for which it is difficult to identify clear threshold exposure levels below which there are no risks of adverse health effects; (2) the Agency's policy goal that drinking water should contribute minimal lead to total lead exposures because a portion of the sensitive population already exceeds acceptable blood lead levels; and (3) the classification of lead as a probably human carcinogen (56 FR 26460 at 26467, U.S. EPA 1991a). EPA believes that individuals who have their homes tested for lead should be aware of the levels below which there is no known or expected risk to health and should have the knowledge that there are steps they can take to further reduce exposure. Therefore, this final rule includes the provision to include the MCLG along with its definition from § 141.153(c)(1).

EPA agrees that there should be a reference to the lead action level, since this is the level at which systems are required to take actions (e.g., public education, corrosion control treatment, lead service line replacement). This rule includes a requirement to include the

term "action level" and its definition from § 141.153(c)(3). EPA is not requiring that systems include an explicit sentence that the level is not health based, but notes that this rule does not preclude a system from adding such a statement to the notice.

In response to providing a level of lead that is a health concern, EPA believes the current MCLG is the best estimate below which there is no known or expected risk to health from lead in drinking water. EPA is currently working toward better defining the correlation between drinking water lead levels and adverse health effects. With regard to how to interpret results, EPA believes that including the required information in the consumer notice allows consumers to make informed decisions regarding their lead levels and provides actions they might take to reduce their lead exposure.

In addition, some commenters expressed confusion about who would receive the result where testing occurred in buildings with many units, such as apartment buildings. Many of these commenters cited landlord-tenant issues that may arise by sending results to all residents. EPA's intent in the proposal was that the sample results go to the individual residence where the sample was taken and this final revision clarifies the intent was not to extend notification of the result from one unit to all units in a building.

A number of commenters were concerned with the burden on non-transient non-community water systems which, they presumed, would have to notify all users of a facility. It was not EPA's intent to have these systems notify all of their users of the results of testing, but to have them post results in a public place under an alternative mechanism. In order to clarify this intent, EPA has added language to § 141.85(d)(4) that provides an example of an alternative mechanism as follows: "For example, upon approval by the State, a non-transient non-community water system could post the results on a bulletin board in the facility to allow users to review the information."

Some states were concerned about the burden associated with tracking and enforcement of this requirement. In response, EPA is requiring in this final rule that systems certify to the State that notification was sent consistent with the requirements in § 141.85(d), as part of the reporting requirements for public education in § 141.90(f).

Lastly, one commenter stated that the consumer notice requirement needed its own unique citation, because citing it under § 141.85 implied that it only applied to the public education

activities triggered by a lead action level exceedance. The proposed revisions did contain a reference to the consumer notice requirements in § 141.80, which stated that all water systems must provide a consumer notice to persons served at the sites that are tested. In addition, there is a similar statement in § 141.85. In order to clarify that all systems must complete this requirement, EPA reordered the sentences in § 141.80 and § 141.85 to state the consumer notification requirements up front. The Agency feels that this adequately clarifies that all systems must provide notification of tap results to consumers at sites that are tested.

### F. Public Education Requirements

EPA is changing the public education requirements of the Lead and Copper Rule in § 141.85. Water systems are still required to deliver public education materials after a lead action level exceedance. However, EPA is making significant modifications to the content of the written public education materials (message content) and adding a new set of delivery requirements. EPA is also making revisions to § 141.154 that will require all community water systems (CWSs) to include an educational statement about lead in their Consumer Confidence Reports.

#### 1. Message Content

##### a. How Is EPA Revising the Message Content?

EPA is changing the required content of the message provided to consumers after a lead action level exceedance by shortening and simplifying the mandatory language. Previously, § 141.85 required written materials to include mandatory language consisting of over 1,800 words describing health effects, levels of lead in drinking water, steps to reduce exposure, and how to obtain additional information. In this revision, the mandatory language will consist of an opening statement, health effects language and sources of further information. The health effects language has been revised to provide greater specificity on the health problems that can result from exposure to lead (e.g., the original health effects language indicated that lead can cause damage to the brain, while the new language specifies that this damage is associated with lower IQ in children). Although the new language includes mandatory language related to health effects, water systems will have the flexibility to tailor some of the topics of the public education message, as mentioned above, to fit their community and situation. For

example, previous public education language required water systems to instruct consumers to flush their faucet for 15–30 seconds or one minute (if the home has a lead service line) before drinking the water. This rule allows systems to tailor flushing directions to their specific situations. Water systems will have to submit the public education materials to the State for review and approval prior to the delivery to consumers. However, the State has the flexibility to not require this approval.

**b. What Is EPA's Rationale for the Message Content Revisions?**

During EPA's national review of the LCR, many stakeholders stated that the public education requirements needed improvement. At the 2004 EPA Public Education Expert workshop, a number of concerns were raised about the effectiveness of the existing public education language and requirements. Workshop participants stated that the mandatory language in the rule was too long, cumbersome, and complex. EPA is revising the public education requirements to ensure that the delivered information is meaningful and useful to consumers. In addition, by simplifying the language, EPA hopes that systems can more effectively convey steps to their customers that they can take to reduce their exposure to lead in drinking water.

EPA also identified compliance as an issue in its review of LCR implementation. Because many water utilities did not conduct the required public education, at-risk populations did not get information they needed to reduce their exposure from lead in drinking water (71 FR 40828 at 40835, U.S. EPA, 2006a). EPA is revising the public education requirements of the LCR in an effort to improve compliance by simplifying the mandatory language and to reduce potential adverse health effects by ensuring that consumers, specifically at-risk populations, receive the information they need in a timely manner to limit their exposure to lead in drinking water.

With some modifications, EPA has included the public education language developed by the National Drinking Water Advisory Council (NDWAC) in this rule as a replacement of the existing public education requirements of the LCR. The revised public education information is more clear and concise and also encourages the public to take an appropriate course of action to reduce their exposure to lead. The health effects language section was revised by EPA to improve consumer awareness and understanding of potential effects of exposure to lead.

**c. What Were the Key Issues Raised by Commenters on the Message Content Revisions and EPA's Response to These Issues?**

While most of the commenters supported the proposed flexibility in the development of public education materials, one suggested that EPA provide a template for small and medium-sized systems that may lack the expertise to draft the public education materials. EPA is in the process of developing guidance that will include templates for the public education materials. Generally, commenters did support shortening the mandatory language. While some commenters believed that the revised language is clearer and easier to understand, most commenters did not like the recommended health effects language, stating that it was too alarming and complex. A few commenters preferred the existing health effects language to what EPA proposed. EPA believes the language should convey the need for consumers to pay attention to the message and understand the risks of exposure. In addition, the new health effects language is more specific about the health effects of greatest concern than was the prior language. However, EPA agrees that the complexity of the proposed mandatory health effects language would limit its utility in conveying to the general public an understanding of the risk posed by lead in drinking water and an appropriate course of action. Therefore, the Agency revised the health effects statement in this final rule to simplify the language—to a reading level that is appropriate for the general public—while retaining its specificity regarding the health effects of greatest concern.

Some commenters believed that the health effects language should promote awareness of the potential effects of lead in drinking water and put them in context with respect to other sources of lead in the environment. EPA believes exposure of humans to lead from any source is a reason for concern and has added the following statement to the mandatory health effects language: "Lead can cause serious health problems if too much enters your body from drinking water or other sources." In addition, this rule contains a provision in § 141.85(a)(iii) that provides for an explanation of other important sources of lead exposure in the public education message.

A few commenters believed that EPA should provide scientific support for the statements about health effects in the revision to substantiate the changes to the health effects language. EPA's most

recent comprehensive analysis of lead health effects may be found in the final document, *Air Quality Criteria for Lead* (US EPA, 2006b), which provides a thorough discussion of lead health effects and includes citations for the studies that support the statements made in the public education language in this rule.

Some commenters wanted the public education materials to explain that a 90th percentile result above the action level does not mean all customers are exposed to water above the action level. EPA did not include any additional mandatory language to this effect in the revision, but believes that there is enough flexibility for a water system to include this type of language if they believe it is important.

Most commenters thought it would be a burden to require States to approve water systems' public education materials before distribution. EPA recognizes that distribution of public education materials following an action level exceedance should not be delayed if States cannot review materials in an expedient manner. Therefore, this rule allows States to determine if they will require State approval of a water system's public education materials before distribution.

EPA requested comment on whether there should be a mandatory requirement to include the contact information for the State drinking water primacy agency. Although large systems most likely will have a representative who can answer customer questions about lead in drinking water, very small systems may not have the expertise to answer all questions. In these cases it may be useful to have State contact information included in the public education materials. Most commenters did not support the addition of State contact information in the public education materials, stating this would create a burden for the States. Some commenters believed that the individual States should make the decision whether to include their State contact information in the public education materials. EPA has therefore not added a mandatory requirement for State contact information as part of the public education content, but believes there is enough flexibility in this final rule for States to make the decision whether to include it.

Two commenters suggested that, rather than using the proposed regulatory language with regard to communicating with customers in their native tongue, EPA should use the existing language in the Public Notification Rule (PNR), § 141.205(c)(2)(i). For public water

systems serving a large proportion of non-English speaking consumers, as determined by the State, the public education materials must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the public education materials or to request assistance in the appropriate language. EPA agrees with this suggestion and has changed the rule language accordingly.

## 2. Delivery

### a. How Is EPA Revising the Delivery Requirements?

EPA is revising the delivery requirement associated with public education materials. EPA is requiring water systems to deliver materials to additional organizations (e.g., licensed childcare facilities, obstetricians-gynecologists and midwives, and preschools) and to include an informational notice with the public education materials explaining the importance of sharing the information with their customers or users. Water systems are required to contact the local health agency via phone or in-person, rather than relying solely on mailing, to request their assistance in distributing information on lead in drinking water and how people can reduce their exposure to lead. Systems must contact the local public health agency even if it is located outside the service area of the water system. Furthermore, the local public health agency may provide a water system with a specific list of additional community-based organizations serving target populations, which may include organizations outside the service area of the water system. If such lists are provided, systems must deliver materials to all organizations on the provided lists.

Under the previous regulation, systems serving less than 500 people could limit their distribution to only those facilities and organizations frequented by the most vulnerable population without approval from the State, but systems serving 501–3,300 persons could only do so if they received written approval from the State. This rule allows all small systems serving 3,300 or fewer people to limit their distribution to only those places frequented by the most vulnerable populations without written approval from the State.

EPA is also requiring water systems to do additional outreach activities, but offers a list of activities from which they may choose in consultation with the

State. Systems serving more than 3,300 people are required to do three additional public education activities from this list, while systems serving 3,300 or fewer people must do one additional activity. Primacy agencies can choose to waive the mandatory press release requirement if there are no media outlets that specifically reach the target population.

In addition, this rule removes the requirement for medium and large systems to provide two public service announcements (PSAs), which differ from press releases, per year. Under this rule, all water systems must post information on water bills (no less than quarterly) and issue press releases throughout the period during which the system is exceeding the lead action level. However, EPA did add a provision which provides State discretion to allow systems to deliver the information in a separate mailing if the informational statement cannot be included on the water bill.

In addition, water systems will have to distribute two press releases as opposed to the one required by the previous Lead and Copper Rule. Larger systems (serving a population >100,000 persons) must also post and keep information on their Web site until the system tests below the action level.

### b. What Is EPA's Rationale for the Delivery Requirements Revisions?

In recognition of the importance of distributing information to the at-risk populations (e.g., pregnant women, infants, and young children) on the hazards of lead and how one can protect themselves from exposure to lead, EPA has added additional organizations (e.g., licensed childcare facilities, obstetricians-gynecologists and midwives, and preschools) to the list of organizations a water system must contact when a lead action level exceedance occurs to ensure that the information reaches all potential bill paying and non-bill paying customers. This is based on NDWAC's recommendation.

EPA believes the informational notice water systems must include, along with the public education materials explaining the importance of sharing this information with their customers/patients, will encourage the organizations that receive the information to share in the task of promoting public awareness. EPA recognizes that local health agencies play an important role in ensuring that consumers who are most vulnerable receive critical information on how one can reduce their exposure to lead. Therefore, EPA is requiring water

systems to directly contact the local health agencies via telephone or in person.

In addition, since EPA believes that communication with consumers is important in promoting public awareness, this rule requires systems to continually communicate with consumers as long as they continue to exceed the lead action level. EPA believes the additional activities required in the rule following a lead action level exceedance (e.g., including information on the water bill; two press releases per year as opposed to the current rule, which requires only one per year; posting information on systems' Web sites) will appropriately bring the seriousness of lead exposure to the attention of consumers.

To ensure that systems employ the appropriate delivery mechanism and content in terms of developing the most effective way of reaching a system's target population, water systems must work in consultation with the State, System, State and consumer representatives on the NDWAC Working Group all agreed that what works in one community does not always work best in another. In order to make the public education as effective as possible, EPA is giving systems some flexibility in how they deliver their public education materials. They are still required to disseminate information to people served by their system, but they have some flexibility in how they complete their program. For instance, a large system in an urban area may choose to use a public service announcement and paid advertisements to reach consumers, while a system in a rural area may find the best way to reach customers is through displaying information in frequently visited public areas or conducting public meetings. Realizing that small systems may have difficulty in completing these requirements, EPA offers States the option to waive the press release requirement if there are no media outlets that target the population served by the system. Furthermore, small systems (serving 3,300 or less people) may limit their distribution to those places frequented by the most vulnerable populations without written approval from the State. EPA recognizes that small systems are typically aware of the constituents in their community and often have the capability to target specific populations through personal relationships. By removing the requirement to obtain State approval, this provision allows these systems to send public education materials to their vulnerable populations as soon as

possible and reduces burden on both the system and the State.

c. What Were the Key Issues Raised by Commenters on the Delivery Requirements Revisions and EPA's Response to These Issues?

Many commenters expressed concern that it would be an implementation burden to deliver public education materials and maintain relationships with the new organizations (e.g., licensed child care facilities, obstetricians-gynecologists and midwives, and preschools). Some commenters believed that water systems should rely on local health departments to provide contact information for the new organizations. As stated in the proposal, EPA believes that the local health agencies play an important role in making sure consumers who are most vulnerable receive the information they need to reduce their exposure to lead in drinking water. However, EPA cannot mandate that health departments generate and provide contact information for the new organizations and is not assuming that local health agencies will have the contact information for these organizations readily available in all cases. As discussed below, this rule has provisions for systems to request that the local health department provide lists of the additional organizations that may or may not only be those within the water system's service area, or the system must make a good faith effort by other means to contact those organizations within their service area.

Some commenters expressed concerns with EPA's proposed regulatory language, which indicated that water systems should make a good faith effort to contact all customers who are most at risk by delivering materials to specified organizations. The commenters stated that "good faith effort" was too open-ended and difficult to enforce. EPA employed the terminology "good faith effort" to cover the unforeseen situations outside of the water system's control when they would not be able to deliver public education materials to organizations (e.g., non-cooperative organization, a new obstetrician-gynecologist office opening up after or right before public education materials are distributed by the water system, and no contact information is available) and allows States the flexibility to address the public education challenges a water system might face. Some commenters stated that requiring water systems to contact their local health agencies and rely on them to provide contact information for the new organizations would constitute a good faith effort.

EPA believes this may be considered a good faith effort but suggests that a water system attempt to find contact information for these organizations by some other means if the local public health agency cannot provide the information.

Some commenters indicated that contacting the new organizations should be in guidance and not a requirement. EPA disagrees. It is important to alert the at-risk populations of how to reduce their exposure to lead. EPA believes the addition of the new organizations to the public education requirements accomplishes two goals: (1) It increases the likelihood that information reaches the most vulnerable populations (i.e., pregnant women, infants and young children) or their caregivers; and (2) It ensures that critical information reaches not only bill paying customers, but also non-bill paying consumers. The non-bill paying consumers may be contacted through these organizations if the organizations are provided with the necessary information and encouraged to share the task of improving public awareness.

Some commenters stated that requiring distribution of material outside of the water system's service area is a burden for the water systems as well as being inconsistent with other drinking water rules. However, EPA believes that if the local public health agency can identify organizations that potentially serve target populations, then a water system should deliver public education materials to this organization even if it is not within the water system's service area. EPA believes there could also be instances where an individual does not reside within the system's service area but is served by the water system in another capacity (e.g., a child lives in another county but spends a large part of their day at a child care facility that is served by a water system with a lead action level exceedance).

Some commenters were concerned that States do not have the means to oversee or verify that systems are fulfilling the requirement to contact the new organizations. Systems that are subject to public education requirements are required as part of § 141.90(f) of this rule to send written documentation to the State that includes a demonstration that the system has delivered the public education materials that meet content requirements of § 141.85(a) and the delivery requirements in § 141.85(b). EPA believes that systems may provide a copy of the contact lists to the State as part of this requirement.

EPA also proposed that systems include a cover letter with the printed materials that they send to organizations to explain the importance of sharing this information with their customers/patients. Some commenters were concerned that this was too prescriptive. Other commenters suggested that the Agency create a template. EPA has revised this requirement to require that systems include an informational notice instead of a cover letter, since this will give systems flexibility in the exact format. In addition, EPA will provide templates as part of separate guidance.

Some States commented that the proposed new requirements were excessive, especially as compared to other rules. However, some commenters supported the requirement that water systems have to conduct the additional activities and believed that the flexibility in the selection of the public education delivery activities would enhance the effectiveness of communication with the public. EPA disagrees with commenters who believe the requirements are excessive; EPA believes these changes better ensure that at-risk populations receive information to enable them to act to reduce their exposure. In addition, the new requirements are based on recommendations from NDWAC, which are modeled after the public education requirements in two existing EPA rules: The Consumer Confidence Report Rule (63 FR 44526, August 19, 1998, U.S. EPA, 1998) and the Public Notification Rule (65 FR 25982, May 4, 2000, U.S. EPA, 2000c).

Commenters supported the revision that provides small water systems (serving 3,300 or less people) the authority to limit their public education distribution to the organizations and places frequented by the most vulnerable populations without State approval. Commenters also supported the provision that would allow States to waive the press release requirement for a small system if there were no media outlets that would reach the target population.

Many commenters thought there were logistical challenges with including an informational statement in water bills when a lead action level exceedance occurs. Some systems do not have the ability to add any information to their water bill especially where they bill using a postcard. Accordingly, EPA added a provision to this final rule which provides State discretion to allow systems to deliver the information in a separate mailing if the informational statement cannot be included on the water bill. Some commenters indicated that many systems do not bill monthly,

so those consumers will not receive the same degree of notification as customers of systems that do bill monthly. In response, EPA has added text to the provision to indicate that when systems notify customers via their water bill, they must do so no less than quarterly. While some customers might receive more notification, EPA believes that no less than quarterly is the maximum time a water system should allow to elapse between notifications during a lead action level exceedance to ensure that the issue still holds customers' attention.

### 3. Timing

#### a. How Is EPA Revising the Timing Provisions of the Rule?

EPA is requiring that water systems that exceed the lead action level conduct public education within 60 days after the end of the monitoring period in which the exceedance occurred. However, as mentioned in section III.B of this notice, States may extend the timeframe to complete the public education activities as long as a water system has started the public education activities within the 60-day period.

#### b. What Is EPA's Rationale for Revising the Timing Provisions of the Rule?

NDWAC was concerned about the lag time between testing water samples, receiving the results, calculating the 90th percentile, and finally sending out public education materials. They were concerned that an individual, particularly an infant or child, could be drinking water with high lead levels for months before the individual or caretaker knows of the problem. As a result, they recommended changes to increase the timeliness of public education on lead in drinking water. The NDWAC recommendations are, in part, modeled after the public education information under two existing EPA rules, the Consumer Confidence Report Rule (40 CFR 141, Subpart O) and the Public Notification Rule (40 CFR 141, Subpart Q). The NDWAC recommendations form the basis for the changes to § 141.85 in this final rule.

While the revision requires systems to complete public education activities within 60 days of the end of the monitoring period in which the exceedance occurred, there is flexibility for the State to allow additional time for completion of these activities. However, systems must receive State approval within the 60-day window for an extension. This ensures that the system and the State begin public education actions to reduce exposure as soon as

possible, but allows these actions to continue past the 60-day timeframe on a case-by-case basis as needed for effective implementation.

#### c. What Were the Key Issues Raised by Commenters on the Timing Provisions and EPA's Response to These Issues?

Commenters indicated that the 60-day timeframe for a system to complete public education requirements was sufficient for most but not all systems. In response, EPA has added a provision to the final rule providing that the State may extend the 60-day window under certain conditions. However, EPA believes that systems should make every effort to complete their public education activities within 60 days after the end of the monitoring period.

### 4. Consumer Confidence Reports

#### a. How Is EPA Revising CCR Requirements?

EPA is revising requirements of the Consumer Confidence Report (CCR) Rule. Previously, all community water systems (CWSs) that detected lead above the action level in more than five percent of the homes sampled and up to and including 10 percent of homes, had to include an informational statement in their CCR about lead in drinking water. EPA is now requiring that all CWSs include an informational statement about lead in their CCRs. In addition, the proposed CCR language that referred to "home plumbing" as the source of high lead levels has been broadened to include service lines, and the National Lead Information Center phone number has been replaced with the phone number for the EPA Safe Drinking Water Hotline.

#### b. What Is EPA's Rationale for the CCR Revisions?

EPA believes that exposure to lead can be a localized phenomenon and has revised the rule based on concerns that exposure to lead may be taking place, even though the action level is not exceeded; consumers, therefore, currently may not receive sufficient information on how to reduce their exposure to lead. Furthermore, in the situation where there has been a lead action level exceedance, NDWAC expressed concern that public education materials may not be delivered immediately; therefore, vulnerable populations may drink water with high levels of lead for months before knowing of the risk.

Under the previous regulations and as stated above, all water systems which detect lead above the action level in more than 5 percent of the homes sampled had to include a short

informational notice about lead in their CCR. EPA is now requiring that all community water systems provide information in their CCRs on lead in drinking water regardless if a system did or did not detect lead. This short statement will be educational in nature and help to ensure that all vulnerable populations or their caregivers receive information (at least once a year) on how to reduce their risk to lead in drinking water. In this revision, EPA is incorporating NDWAC's recommended changes to the informational notice, which would serve to clarify the risk of lead in drinking water, including basic steps on how to reduce exposure to lead in drinking water and where to go for more information. Additionally, requiring all systems to have one statement simplifies compliance with this provision of the rule for the systems and the States. The new language is intended to help consumers understand the health effects associated with lead, that lead levels can vary from home to home, that they can take steps to reduce their exposure, and where to get more information.

#### c. What Were the Key Issues Raised by Commenters on the CCR Requirements and EPA's Response to These Issues?

Most of the comments that EPA received were directed towards the proposed detection limit threshold for requiring statements about lead in the CCR. Some commenters agreed that the method detection limit for lead of 0.001 mg/L should be used as the threshold for the inclusion of the lead statement. Others suggested that requiring the lead statement should be based on the practical quantitation limit for lead of 0.005 mg/L, a 90th percentile lead action level exceedance, or a lead detection in drinking water at a level determined to have adverse health effects. Some commenters even suggested that no changes be made to the CCR requirements. EPA realizes, however, there are situations where the most vulnerable populations may be exposed to elevated levels of lead for many months before or without being notified, as can occur in the case of a system that has elevated lead levels but only in less than 10 percent of compliance samples. EPA believes, therefore, that the CCR is a good mechanism to communicate with all customers the health risks of lead in drinking water in the interest of being proactive. EPA also believes the CCR is another opportunity to remind customers that they share responsibility for reducing their exposure to lead with their water system.

Some commenters thought there should be a different information statement for water systems samples above the lead action level than for systems below the lead action level and above the MDL. Other commenters were concerned that multiple, varying notices would unduly complicate compliance tracking and enforcement of this requirement. Furthermore, a large percentage (>95%) of the water systems would have detects above the MDL and therefore be required to have an informational statement in their CCR. Because the actual level of lead exposure for drinking water varies with individual homes, EPA concluded that levels detected in the system would not necessarily reflect the risk faced by consumers. As a result, and because of the concern over the logistics of compliance and tracking multiple different lead statements in CCRs, EPA concluded that all systems should have a simple informational statement about lead in their CCR, which would be educational in nature.

Some commenters indicated that the CCR is a good way to educate the public about lead in drinking water. On the other hand, some viewed the proposed CCR requirement as redundant with the other public education requirements and not an effective way to reach populations before there is a major problem with lead in the water system. Consistent with the NDWAC recommendations, EPA believes that the combination of methods for delivering this urgent message (through public education materials, CCR, and consumer notice of tap water results) will provide a more effective way to reach the customer in a timely and appropriate basis. Some commenters thought that additional CCR language would pose an undue burden on systems that are in compliance with the LCR and that the required text would be too alarming. Some commenters believed that the CCR requirement for lead was inconsistent with the public notification regulations for other inorganic contaminants. However, while a water system may be in full compliance with the LCR, a home served by that water system may have elevated levels of lead in their tap water. Lead is unlike many other contaminants in that it is primarily introduced into drinking water as the water passes through plumbing materials from the distribution main into the household. As a result, and due to the particular concern that it is critically important to reach vulnerable populations in a timely manner to avoid as much lead exposure for those populations as possible, EPA

believes a special lead notice is appropriate.

Some commenters stated that the proposed language on the sources of lead required to be included in the Consumer Confidence Report focused too much on household plumbing materials as the source of lead exposure in drinking water and did not consider the other sources of lead in the distribution system. To address this concern, EPA has modified the text by adding "service lines" to more fully characterize sources of lead in drinking water.

### *G. Reevaluation of Lead Service Lines Deemed Replaced Through Testing*

#### 1. How Is EPA Revising This Rule?

EPA is requiring water systems to reevaluate lead service lines classified as "replaced through testing" if they resume lead service line replacement programs. This will only apply to a system that had (1) initiated a lead service line replacement program, then (2) discontinued the program, and then (3) subsequently resumed the program. When resuming the program, this system will have to reconsider for replacement any lead service lines previously deemed replaced through the testing provisions in § 141.84(c) during the initial program. This change adds a subsection to the lead service line replacement requirements in § 141.84(b) to include provisions for systems resuming lead service line replacement programs. Systems will have to update the inventory of lead service lines to include those that were classified as "replaced through testing." The system will then divide the updated number of remaining lead service lines by the number of remaining years in the program to determine the number of lines that must be replaced per year (seven percent lead service line replacement is based on a 15-year replacement program so, for example, systems resuming lead service line replacement after previously conducting two years of replacement would divide the remaining inventory by 13).

#### 2. What Is EPA's Rationale for the Reevaluation of Lead Service Lines Revisions?

Lead service line replacement is intended as an additional step to reduce lead exposure when corrosion control treatment is unsuccessful. The provision in § 141.84(c), which allows systems to leave in place an individual lead service line if the lead concentration in all service line samples from that line is less than or equal to 0.015 mg/L, is intended to maximize the exposure

reduction achieved per service line replaced by avoiding the disruption and cost of replacing lines that are not leaching elevated levels of lead. However, samples taken from a lead service line pursuant to § 141.84(c) cannot predict future conditions of the system or of the service line. Systems can discontinue a lead service line replacement program by meeting the lead action level for two consecutive 6-month monitoring periods. Therefore, EPA is requiring these systems to reconsider any lines previously determined to not require replacement if they exceed the action level again in the future and resume the lead service line replacement program.

#### 3. What Were the Key Issues Raised by Commenters on the Reevaluation of Lead Service Lines Revisions and EPA's Response to These Issues?

Commenters generally agreed that all existing lead service lines should be considered when resuming a lead service line replacement program. However, there were some commenters who had concerns with the timing and believed that the 15-year clock should be reset when resuming a replacement program. In 1991, EPA established the maximum replacement schedule of 15 years for all systems in order to ensure that public health is adequately protected (56 FR 26460 at 26507–26508, U.S. EPA, 1991a). The Agency continues to believe that systems that are exceeding the action level should have no more than 15 years to replace all of their lead service lines, as intended by the original rule. Sites that met the test-out provision would need to be re-evaluated or replaced within the remaining timeframe. This approach provides an incentive to physically replace the portion of the lead service line under the control of the system. Many lead service lines are over 70 years old and may need to be replaced soon simply based on their age.

Some commenters also recommended that flexibility be given to the State to determine when treatment or source changes are significant enough to require reevaluation of lead service lines. This rule does not change the requirements that trigger lead service line replacement. Systems that have installed optimal corrosion control and that subsequently exceed the lead action level must perform lead service line replacement. If a system makes a treatment or source change that does not affect the system's optimal corrosion control and the system continues to comply with the LCR, then it is not necessary for the system to perform lead service line replacement. If a system

makes a treatment or source change that does affect the optimal corrosion control and the system subsequently exceeds the lead action level, then the system must perform lead service line replacement. This rule does not preclude any system currently meeting the lead action level from optionally replacing lead service lines.

Some commenters expressed concern that a system could complete a 15-year lead service line replacement program and then meet the action level only to re-exceed it and be triggered into lead service line replacement. Under this scenario, there would be no time left to re-evaluate or replace lead service lines. EPA has added the following provision to address this specific situation. For those systems that have completed a 15-year lead service line replacement program, the State will determine a schedule for replacing or retesting lines that were previously tested out under the replacement program when the system re-exceeds the action level. However, once a system has been in a lead service line replacement program for more than five years, the system may want to consider physically replacing the portion of all lead service lines under their control rather than continuing to use the test-out provision. Replacing the line would eliminate the possibility of having to go back and re-evaluate it or replace it if the action level is re-exceeded. In addition, many systems currently replace lead service lines when they find them regardless of their 90th percentile.

#### *H. Other Issues Related to the Lead and Copper Rule*

##### 1. How Is EPA Revising This Rule?

EPA has decided not to make any further rule changes at this time to address the following issues that EPA requested comment on in section III.H of the proposed rule (71 FR 40828 at 40839, U.S. EPA, 2006a): Plumbing component replacement; point-of-use (POU) and point-of-entry (POE) treatment; site selection in areas with water softeners and POU treatment units; and water quality parameter monitoring.

##### 2. What Is EPA's Rationale for Not Including Any of These Other Issues in the Final Rule Revisions?

EPA concluded that sufficient flexibility exists under the current rule for small systems to utilize plumbing fixture replacement or point-of-use/point-of-entry devices to meet the action level and be deemed optimized under § 141.81(b)(1). Under the current rule, small non-transient, non-community

water systems, where 100% of the plumbing fixtures and components are directly controlled by the system, may replace them and be optimized once the system has met the action levels for two consecutive six-month monitoring periods. Small water systems may also install point-of-use (POU) devices, if they meet the SDWA requirements for their use, and be deemed optimized by meeting the action levels for two consecutive six-month monitoring periods. In the preamble to the proposed rule, EPA noted that where a State does not require a corrosion control study, systems have 24 months after an action level is exceeded before the State specifies optimal corrosion control treatment (71 FR 40828 at 40840, U.S. EPA, 2006a). The fixture replacement or POU installation would need to be completed within 12 months of exceeding the action level in order to complete two consecutive six-month monitoring periods before the State specifies optimal corrosion control. Additionally, systems will still need to recommend optimal corrosion control treatment to the State within six months of the action level exceedance. Plumbing fixture replacement may not be successful in meeting the action level or the system may be unable to secure participation from all sites under a POU approach, so the system may need to install the optimal corrosion control treatment.

There is also additional flexibility under the existing rule. States could require a corrosion control study for systems that have made progress towards completing either a plumbing replacement or POU approach. The study would need to be completed within 18 months or 30 months after the action level exceedance. This would provide an additional six-month monitoring period to meet the optimization requirement pursuant to § 141.81(b)(1), while having the system develop an optimal corrosion control recommendation if the plumbing replacement is not successful or the POU approach cannot be implemented. The State will designate optimal corrosion control six months after the completion of the corrosion control study. When a corrosion control study is required by the State, systems can have up to three years after the action level exceedance to meet the action level for two consecutive six-month monitoring periods before they would need to install the optimal corrosion control specified by the State.

EPA also requested comment on two monitoring issues. The first was whether the Lead and Copper Rule should be amended to allow sampling at

locations with POU/POE devices used to remove inorganic contaminants in exceptional cases (such as systems with a high prevalence of water softeners), and, if so, how high risk sites should be identified. The second was whether the Lead and Copper Rule should be amended to require systems to synchronize required water quality parameter sampling with lead and copper tap sampling. Due to the complexity of the issue, EPA has determined that rule changes on site selection and synchronization should be addressed as part of the broader monitoring revisions. For the POU/POE site selection issue, EPA notes that there may be additional flexibility under § 141.86(a)(5) which states: "A community water system with insufficient tier 1, tier 2, and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system." EPA believes that the current rule provisions and guidance on this issue are sufficient at this time.

##### 3. What Were the Key Issues Raised by Commenters on These Other Issues and EPA's Response to These Issues?

EPA received a range of comments on the issue about whether there is enough flexibility under the existing rule to use plumbing replacement without specifying it as optimal corrosion control. Some commenters stated that the existing timeframes are sufficient for systems to implement plumbing replacement and that the rule should not be revised to call it an optimal corrosion control treatment. Other commenters asserted that EPA should specify plumbing replacement as optimal corrosion control treatment. As noted above, EPA believes that there is sufficient flexibility under the existing rule for a small system to pursue a fixture replacement strategy without listing it as an optimal corrosion control treatment. Because fixture replacement may not be successful in reducing lead below the action levels if some lead sources remain in the plumbing system, systems will need to prepare an optimal corrosion control treatment recommendation (either with or without a corrosion control study) and be prepared to install it if the action level is still exceeded. EPA noted in the preamble to the proposed rule that plumbing fixture replacement is not a corrosion control technique and would not have applicable water quality

parameters that could be set by the State if the system continued to exceed the action level.

EPA also received a range of comments on the issue about whether there is enough flexibility under the existing rule to use POU or POE without specifying it as corrosion control. Some commenters stated that the existing timeframes are sufficient for systems to implement a POU strategy and that the rule should not be revised to call it an optimal corrosion control treatment. Other commenters said that EPA should specify POU/POE as an optimal corrosion control treatment. As noted above, EPA believes that there is sufficient flexibility under the current rule for a small system to pursue a POU strategy without listing it as an optimal corrosion control treatment. Unless the POU option was limited to only those systems that control 100% of the distribution system (as was suggested by several commenters), the system may not be able to secure participation from all sites and may need to install corrosion control. Even if EPA limited the option to only those systems that control 100% of the distribution system, EPA does not believe that POU should be listed as an optimal corrosion control treatment. Under the existing rule, the action levels serve as screens for optimization, but systems can exceed the action levels and still be in compliance with the LCR by meeting the optimal water quality parameters specified by the State. Commenters who supported POU as an optimal corrosion control treatment did not provide any alternatives on how to demonstrate compliance with the treatment technique when the action level is exceeded. Many commenters agreed with EPA's concern that because there are lead-containing materials in plumbing after POE devices, it may not be successful in meeting the action level. EPA does not believe that POE should be listed as an optimal corrosion control treatment because of these unaddressed lead sources.

Most of the comments on the issue of sampling sites with POU and POE devices indicated that a rule change was not necessary and that the prohibition should remain in § 141.86(a)(1). EPA agrees with those commenters and does not plan to codify the guidance.

The final issue on which EPA requested comment was synchronization of water quality parameter sampling with lead and copper tap sampling. While many commenters supported the scientific rationale for this proposed change, a number of comments received expressed concern over which

synchronization timeframe would be appropriate and the feasibility of implementing a synchronized sampling approach. Several large systems noted that homeowners are the ones who collect the lead and copper tap samples and send them back to the utility. These commenters expressed that since the utility does not know the exact date that the samples will be taken by the homeowner, synchronizing water quality parameter and lead and copper tap samples would be difficult to coordinate. Some commenters noted that current water quality parameter sampling requirements for systems on reduced monitoring require these systems to take their water quality parameter samples throughout the year in order to capture seasonal variability. EPA also received input that in many States, water quality parameter sampling for small and medium systems is not started until after all tap samples are collected and the determination made that a water system does not meet the 90th percentile action level, consistent with the specific language of the LCR. Due to the complexity of issues, challenges with implementation, and potential burden, EPA has decided not to revise the LCR to require water quality parameter synchronization at this time, but will revisit this issue in future revisions to the rule.

#### *I. Compliance Dates*

##### **1. What Are the New Compliance Dates for This Rule?**

Section 1412(b)(10) of the Safe Drinking Water Act requires that a proposed national primary drinking water regulation (and any amendments) take effect on the date that is three years after the date of promulgation, unless the Administrator determines that an earlier date is practical. EPA proposed that the revisions take effect for purposes of compliance three years after the promulgation of the final rule. EPA requested comment on the practicality of implementing the following specific changes within 60 days of final rule promulgation: Minimum Number of Samples Required (III.A), Definitions for Compliance and Monitoring Periods (III.B), Consumer Notification of Lead Tap Water Monitoring Results (III.E) and Public Education Requirements (III.F). EPA also requested comment upon whether all of the proposed revisions should have an effective date earlier than three years after publication of the final rule. After reviewing comments, EPA is adopting a compliance date for all of the final rule provisions, of 180 days after publication in the **Federal Register** or the effective date of any

State program changes needed to implement the rule, whichever is later. However, EPA is also requiring an outside compliance date of two years after promulgation, which coincides with the date by which States are required to adopt and submit revised programs adopting this rule under 40 CFR 142.12. For States that adopt this rule after six months but before two years, this rule will become effective on the date that the State rule is effective, as long as it is before the date two years after promulgation of this rule.

##### **2. What Is EPA's Rationale for the Compliance Dates?**

There were several considerations behind this compliance date. First, EPA believes that States and systems will not need three years to implement any of the rule changes. These rule changes are all modifications of existing requirements and procedures under the LCR or CCR. EPA believes States and systems will not need extensive training or program development to implement these revisions. Additionally, none of the revisions require systems to undertake new capital improvements prior to implementation. Second, many of these changes are important improvements to the LCR, which should help improve critical consumer information about lead and reduce lead exposure, so they should be established as quickly as possible. Third, EPA is also aware that because many of these requirements are procedural in nature, having dual Federal and State requirements at the same time is confusing to systems, the public, and the regulators. As a result, it is important to try to make the Federal changes and State changes coincide as much as possible. Finally, EPA received helpful comments from the public urging that the requirements should take effect no earlier than six months after promulgation.

EPA therefore decided to adopt a compliance date structure that is similar to the one used for the public notification rule revisions in 2000. This rule, therefore, provides a minimum compliance date of 180 days after promulgation, after which the rule will be in effect where EPA has primacy (Wyoming, DC, and most Indian territories) and where States incorporate EPA's drinking water regulations by reference. EPA is also providing a maximum compliance date of two years after promulgation, which coincides with the date by which States are required to adopt and submit revised programs adopting this rule under 40 CFR 142.12. For States that adopt this rule after six months but before two

years, this rule will become effective on the date that the State rule is effective, as long as it is before the date two years after promulgation of this rule. This gives States the flexibility of choosing early implementation, enabling the water systems to take advantage of the efficiencies in the new regulations in less than two years, or provides States two years to accomplish the preparatory activities needed to implement the revisions.

3. What Were the Key Issues Raised by Commenters on the Compliance Dates and EPA's Response to These Issues?

Some commenters indicated that an early compliance date would impose additional burden on the States and utilities (e.g., conduct staff training, inform water systems, revise rules and

submit primacy revisions) and suggested the compliance date be three years after final rule promulgation. Some commenters had concerns about the feasibility of a 60-day effective date and proposed an effective date within 180 days of final rule promulgation. EPA agrees that 60 days may not offer States enough time to conduct training, review guidance and distribute information to water systems about the new requirements; therefore, EPA has revised the compliance date to 180 days after final rule promulgation. EPA believes there are a number of improvements in this rule that States will want to utilize and that 180 days is a feasible timeframe for the States to conduct the necessary preparatory actions. One commenter noted that EPA

should not make the requirements effective before the State has time to adopt the change to avoid complications in meeting both State and Federal requirements. EPA agrees and is revising the date to give a broad timeframe during which the State may adopt the rule (180 days to 2 years).

J. State Implementation

States with approved primacy programs under 40 CFR part 142 subpart B must revise their programs to adopt any changes to the Lead and Copper Rule that are more stringent than their approved program. The primacy revision crosswalk table lists all the provisions that States must adopt to retain primacy. Table III.1 summarizes the rule revisions.

TABLE III.1.—FINAL RULE REVISIONS

CFR citation	Is the requirement more stringent?	Revision
§ 141.80(a)(2)	No	Technical correction that deletes effective dates of the LCR which no longer apply.
§ 141.80(c)(3)(v)	No	PWS allowed by the State to collect fewer than five samples must compare the highest sample result to the action level.
§ 141.80(g)	Yes	PWSs will be required to provide consumers with the results of lead testing who are located at sites that are part of the utility's monitoring program.
§ 141.81(b)(3)(iii), § 141.86(d)(4)(vii), § 141.86(g)(4)(iii), § 141.90(a)(3).	Yes	States must approve new sources or long-term changes in water treatment before PWS implementation.
§ 141.81(e)(1)	Yes	Clarifies end of the tap sampling and timing for PWS recommending optimum corrosion treatment.
§ 141.81(e)(2)	Yes	Clarifies end of the monitoring period and timing for State requiring corrosion control studies.
§ 141.81(e)(2)(i), § 141.81(e)(2)(ii)	Yes	Clarifies end of the monitoring period and timing for State specifying optimum corrosion control treatment.
§ 141.83(a)(1)	Yes	Clarifies end of the source water monitoring period and timing for recommending source water treatment to the State.
§ 141.84(b)(1)	Yes	Clarifies beginning of the first year for lead service line replacement.
§ 141.84(b)(2)	Yes	Requires updating inventory and yearly replacement of lead lines when resuming lead service line replacement program.
§ 141.90(e)(2)(ii)	Yes	Clarifies resumption of line replacement.
§ 141.85	Yes	New public education requirements that replace the ones that exist in the current rule. New requirement for PWS to provide a notice to consumers who are part of the utility's lead testing program with sampling results. New content and delivery requirements for public education materials. New requirement for PWS to target specific audiences for increased awareness.
§ 141.88 (b), § 141.90(a)(1), § 141.90(e)(1), § 141.90(e)(2).	Yes	Clarifies end of the monitoring period.
§ 141.86(c)	No	Requires PWS to collect a specified number of samples. Allows State discretion to allow PWS to sample 100 percent of taps if there are fewer than five taps that can be used for human consumption in the system.
§ 141.86(d)(4)(i), (ii), (iii), § 141.86(d)(4)(vi)(B)(1), § 141.86(g)(4)(i), § 141.87(e)(2)(ii), § 141.88(d)(1)(i), § 141.88(d)(1)(ii), § 141.88(e)(1), § 141.88(e)(2).	Yes	Clarifies sample collection periods for reduced monitoring.
§ 141.86(d)(4)(ii) and (iii), § 141.86(d)(4)(vi)(B)	Yes	Requires all systems must meet the lead action level as a condition for reduced monitoring.
§ 141.86(d)(4)(iv)(A)	Yes	Specifies time period to resume standard tap water monitoring.

TABLE III.1.—FINAL RULE REVISIONS—Continued

CFR citation	Is the requirement more stringent?	Revision
§ 141.86(d)(4)(vi)(B) .....	Yes .....	Specifies time period to resume water quality parameter monitoring.
§ 141.86(d)(4)(ii) .....	Yes .....	Clarifies monitoring frequency.
§ 141.87(d), § 141.87(e)(2)(i) .....	Yes .....	Clarifies time period for water quality parameter monitoring.
§ 141.90 (f)(1), § 141.90 (f)(1)(i), § 141.90 (f)(3) .....	Yes .....	Revised public education program reporting requirements based on amendments to § 141.85.
§ 141.154 (d)(1) and (2) .....	Yes .....	All CWSs must include a statement about lead, health effects language and ways to reduce exposure in every CCR released to the public. Flexibility is given to CWSs to write its own educational statement, but only in consultation with the Primacy Agency.

1. How Do These Regulatory Revisions Affect a State's Primacy Program?

States must revise their programs to adopt any part of this final rule which is more stringent than the approved State program. Primacy revisions must be completed in accordance with 40 CFR 142.12 and 142.16. States must submit their revised primacy application to the Administrator for approval. State requests for final approval must be submitted to the Administrator no later than two years after promulgation of a new standard unless the State requests and is granted an additional two-year extension.

For revisions of State programs, 40 CFR 142.12 requires States to submit, among other things, any additional materials that are listed in 40 CFR 142.16 of this part for a specific EPA regulation, as appropriate 40 CFR 142.12(c)(1)(ii). For the final revisions to the lead and copper rule, EPA believes that requirements in § 142.12(c) will provide sufficient information for EPA review of the State revision. The side-by-side comparison of requirements required in § 142.12(c)(1)(i) will consist of sections revised to adopt the changes required for the revised lead and copper rule and any other revisions requested by the State. Because the rule consists of changes to an already approved Federal NPDWR in primacy States, EPA believes that the State's existing statutes and regulations will already have received extensive legal review. Under

§ 142.12 (c)(3), EPA can request supplemental information as necessary for a specific State submittal on a case-by-case basis. Therefore, the Agency is waiving the Attorney General's statement required in § 142.12(c)(1)(iii), as allowed by § 141.12(c)(2).

2. What Does a State Have To Do To Apply?

To maintain primacy for the Public Water System Supervision (PWSS) program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt this final rule. A State must submit a request for approval of program revisions that adopt the regulations and implement those regulations within two years of promulgation unless EPA approves an extension under § 142.12(b). Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

3. How Are Tribes Affected?

At this time the Navajo Nation has primacy to enforce the PWSS program.

EPA Regions implement the rules for all the other Tribes under section 1451(a)(1) of SDWA.

IV. Economic Analysis

This section describes the estimates of annual costs for the seven regulatory changes to utilities' and States' requirements, including costs associated with administrative, monitoring, sampling, reporting, and notification activities for this final rule. One-time, upfront costs of rule review and rule implementation are also described. There are two types of annual costs that may result from the rule changes—direct and indirect. Direct costs are from those activities that are specified by the rule change, such as costs for additional monitoring or distribution of consumer notices. Indirect costs may also result when systems and States use the information generated by directly-related rule activities to modify or enhance practices to reduce lead levels. These indirect costs, and related health risk reductions, are not quantified for the purposes of this analysis, but are described qualitatively in section IV.K of this notice and in Chapter 5 of the *Economic and Supporting Analyses: Short-Term Regulatory Changes to the Lead and Copper Rule* (U.S. EPA, 2007a). Table IV.1 summarizes the expected direct and indirect cost impacts for the seven regulatory changes.

TABLE IV.1.—SUMMARY OF DIRECT AND INDIRECT IMPLICATIONS OF THE LCR SHORT TERM RULE CHANGES

Rule change	Direct cost implications	Indirect cost and health risk implications
Regulatory Change III.A (Number of samples) .....	Yes .....	Yes.
Regulatory Change III.B (Monitoring Period) .....	Unquantified .....	None.
Regulatory Change III.C (Reduced Monitoring Criteria) .....	Yes .....	Yes.
Regulatory Change III.D (Advanced Notification and Approval) .....	Yes .....	Yes.
Regulatory Change III.E (Consumer Notice of Lead Results) .....	Yes .....	Yes.
Regulatory Change III.F (Public Education) .....	Yes .....	Yes.
Regulatory Change III.G (Reevaluation of Lead Service Lines) .....	Yes .....	Yes.

### A. Direct Costs

The revisions in this final rule will result in direct costs to utilities and States from activities that are specified by rule changes, including administrative, monitoring, sampling, reporting, and notification activities. These costs will result in an increase in the overall costs associated with the LCR.

The most recent cost estimates to utilities and States of the LCR can be found in the 2004 Information Collection Request for Disinfectants/Disinfection Byproducts, Chemical, and Radionuclides Rules (Information Collection Request for Disinfection Byproducts, Chemical, and Radionuclides Rules, U.S. EPA, 2004a). The 2004 ICR estimates administrative burden and costs associated with the LCR for systems and States. System costs are estimated for community water systems and non-transient non-community water systems to perform the following activities: Monitor for water quality parameters, tap sampling of lead levels for action level compliance, review of sample data, including the calculation of lead and copper 90th percentile levels, submission to the State of monitoring data and any other documents or reports, and recording and maintaining information. In addition, some systems must submit corrosion control studies, recommend and submit information regarding the completion of corrosion control treatment (CCT) or source water treatment installation, conduct public education, or conduct lead service line (LSL) monitoring, notification, and replacement. In the 2004 ICR, the average annual cost to CWSs and NTNCWSs for the LCR requirements was estimated to be \$57.9 million (2006\$) and the burden was estimated to be 1.72 million hours for reporting (including lead service line replacement reporting), recordkeeping, and public education activities of the LCR. For States, the annual cost and burden incurred by primacy agencies for activities associated with the LCR were estimated to be \$6.8 million and 0.21 million hours, respectively.

### B. Overall Cost Methodologies and Assumptions

As part of its comprehensive review of the Lead and Copper Rule, EPA collected and analyzed new data on various aspects of LCR implementation. When available and appropriate, this new information has been used in estimating the incremental costs of this rule. If new information was not available about a cost item or

assumption, previous analyses of LCR requirements were reviewed to determine if a suitable estimate was available. The 1991 Regulatory Impact Analysis (RIA) (*Final Regulatory Impact Analysis of National Primary Drinking Water Regulations for Lead and Copper*, U.S. EPA 1991b), the 1996 RIA Addendum (*Regulatory Impact Analysis Addendum*, U.S. EPA 1996b), and the various Information Collection Requests were all used as sources of information and assumptions.

For the rule revisions that clarify the existing LCR rule language, if the costs associated with those activities were included in the original LCR cost estimates as presented in the 1991 RIA, those costs are not included in this analysis.

### C. Direct Costs Associated With Regulatory Change III.A

Regulatory Change III.A clarifies EPA's intent that a minimum of five samples must be taken when conducting compliance monitoring. If a system has fewer than the minimum number of taps required for sampling, then those systems will have to collect multiple samples on different days from the same tap so that the total number of samples per monitoring period is five. States, however, have the discretion to allow water systems with fewer than five taps for human consumption to collect one sample per tap. Under this alternate sampling schedule, the sample with the highest test result will be compared to the action level to determine compliance.

Although some systems may change the number of samples taken in response to these provisions, there is very limited available data on the number of these systems and on the frequency with which they conduct lead and copper monitoring. Because of lack of data, EPA has not quantified the annual direct costs or savings associated with Regulatory Change III.A. EPA has quantified the one-time implementation costs for water systems with fewer than five taps to request permission to collect one sample per available tap and for States to review and decide upon these requests to collect one sample per available tap. Those costs are given in section IV.K.

### D. Direct Costs Associated With Regulatory Change III.B

Regulatory Change III.B clarifies the meaning of "monitoring period" and "compliance period," addressing in particular the date on which actions are triggered by an exceedance and the timing of samples under reduced monitoring schedules. Based on the rule

change, if a system exceeds the lead action level during a monitoring period, non-compliance starts at the end of the monitoring period (for most systems on September 30). Under the previous language, it was not clear whether non-compliance began at the end of the calendar year (December 31) or at the end of the monitoring period (September 30).

As a result of this rule change, activities triggered by an action level exceedance could begin three months earlier (e.g., at the end of September versus the end of December), but the duration of these activities would not likely be longer. The net result is a change in the timing of activities, with a difference of three months having negligible, if any, impact on costs.

Regulatory Change III.B also requires that systems on reduced monitoring, such as triennially or once every nine years, must take all compliance samples within the same calendar year during the June–September monitoring period. Under the existing rule, a system could collect compliance samples over multiple calendar years, as long as they were taken during the June–September time frame and during the three-year compliance period. In addition, systems on triennial monitoring must monitor no later than every third calendar year. Similarly, systems on nine-year monitoring schedules must monitor no later than every ninth calendar year. Since this rule change does not alter the number of samples to be taken, but the timing of samples, the direct cost impact is expected to be negligible.

### E. Direct Costs Associated With Regulatory Change III.C

#### 1. Activities Resulting From Regulatory Change

As a result of Regulatory Change III.C, utilities that have 90th percentile LCR monitoring samples that exceed the lead action level, and are currently on reduced monitoring, will be required to resume standard monitoring schedules for monitoring lead at taps. In addition to monitoring activities, utilities will have to meet reporting requirements to the State/primacy agency. State/primacy agencies will be required to review utility monitoring reports.

#### 2. Costs to Utilities

The direct costs to utilities, summarized in Table IV.3, are estimated to be \$2.7 million annually including \$2.5 million in labor costs and \$0.2 million in materials costs. Detailed estimates are provided in the Economic Analysis, Appendix C.

The systems that will incur costs under this regulatory change are those systems that exceed the lead action level and that had been on reduced monitoring. The number of systems EPA estimates to exceed the lead action level

each year is 994 as shown in Table IV.2. This estimate is based upon 2003 lead action level exceedances reported by States to EPA's Safe Drinking Water Information System for systems serving more than 3,300 people. For purposes of

this analysis, EPA used this data to estimate that 1.4 percent of systems (including system serving fewer than 3,300 people) will exceed the action level each year.

TABLE IV.2.—SYSTEMS EXCEEDING THE ACTION LEVEL SINCE 2003

	<3,300 <sup>1</sup>	3,300<50,000	>50,000	Total
Number of systems above action level since 2003 .....	884	96	14	994
Total number of systems .....	64,382	7,388	819	72,589
Percent of systems with monitoring results since 2003 over AL .....	1.4%	1.3%	1.7%	1.4%

<sup>1</sup>The Estimate for systems <3,300 is based upon data from systems >3,300.

Source: For medium and large systems, January 2005 Summary of lead action level, [http://www.epa.gov/safewater/lcrmr/lead\\_data.html](http://www.epa.gov/safewater/lcrmr/lead_data.html); for small systems, Summary, lead action level exceedances for public water systems subject to the Lead and Copper Rule (For data through September 13, 2004).

The number of systems on reduced monitoring was estimated using State responses to the EPA State Implementation of the Lead and Copper Rule survey (*State Implementation of the Lead and Copper Rule*, U.S. EPA 2004b). States provided estimates of the percent of systems on reduced LCR monitoring. Based on this data, 91 percent of systems are on reduced lead and copper monitoring. This analysis assumes that systems that are likely to exceed the lead action level, and are on reduced monitoring, are likely to exceed at the same rate as all systems. Therefore, EPA assumes that 1.4 percent of the 91 percent of the systems estimated as likely to exceed the action level are on reduced monitoring and will therefore incur costs due to Regulatory Change III.C. EPA notes that this assumption likely over-estimates the number of systems that will be affected by this regulatory change because systems that are likely to have exceedances are generally less likely to be on reduced monitoring in the first place.

For the number of additional monitoring events, it is assumed that each utility will conduct five additional monitoring events in each three year period by switching from a reduced monitoring schedule (triennial) to standard tap monitoring (semi-annual). While reduced monitoring could refer to either monitoring once every year or once every three years, it is not possible to distinguish, from the State responses to the EPA survey, between systems monitoring once every year and systems monitoring once every three years. This analysis assumes that all systems on reduced monitoring are on a one sample every three years schedule, an assumption that might slightly over-estimate costs. Likewise, the number of samples collected in each monitoring period will change when the utility switches from reduced monitoring to standard monitoring. Thus, a system that was on reduced monitoring, but is placed on regular monitoring after an action level exceedance under Regulatory Change III.C, will incur an additional five monitoring events over a three year period (six monitoring events

in three years under regular monitoring instead of one monitoring event in three years under reduced monitoring), with an increased number of samples collected in each event. The required number of samples varies by system size, with the smallest systems (serving less than or equal to 100 people) required to take five samples per monitoring event under both standard and reduced monitoring, and the largest systems (serving >100,000 people) required to take 100 samples per monitoring event under standard monitoring and 50 samples per monitoring event under reduced monitoring.

3. Costs to States

Regulatory Change III.C will require States to review utility monitoring reports as a result of resuming standard monitoring schedules. The direct costs to States is estimated to be \$82,000 annually including \$81,000 in labor costs and \$1,000 in materials costs, as summarized in Table IV.3. Detailed estimates are included in the Economic Analysis, Appendix C.

TABLE IV.3.—SUMMARY OF ESTIMATED DIRECT COSTS TO SYSTEMS AND STATES ASSOCIATED WITH REGULATORY CHANGE III.C (2006 DOLLARS)

	Annual labor	Annual materials	Total annual
Costs to Systems:			
Reporting .....	\$60,000	\$1,000	\$61,000
Tap Monitoring .....	2,442,000	193,000	2,635,000
Total System Costs .....	2,502,000	194,000	2,696,000
Costs to State/Primacy Agencies:			
Review Costs .....	81,000	1,000	82,000
Total State Costs .....	81,000	1,000	82,000

### F. Direct Costs Associated With Regulatory Change III.D

#### 1. Activities Resulting From Regulatory Change

Regulatory Change III.D requires water systems to obtain prior approval by the State to add a new source of water or to make a long-term treatment change prior to implementation. New system activities will include an assessment of the implications of long-term treatment or source changes on corrosion control prior to the change and a letter to the state. New State activities will include the review of the system data on the implications of a long-term treatment or source change on corrosion control prior to a change, preparation of conclusions, and coordination with utilities. The estimated costs to the affected systems and States are summarized in Table IV.4.

#### 2. Costs to Utilities

EPA estimates that the direct costs to utilities range from \$506,000 to \$765,000 annually. These direct costs are strictly labor costs; materials costs are expected to be negligible. Detailed estimates are provided in Appendix D (Table 6.1) of the Economic Analysis.

In order to estimate the annual cost of this provision to utilities, information is needed on the number of systems that would likely implement a long-term treatment change or add a source each year, as well as the number of systems that are located in States that already have a review and approval requirement. Systems located in these States will not incur additional costs under this provision.

As determined during EPA's review of the implementation of LCR requirements by States, many States already have a review and approval process for treatment or source changes. For the purposes of this analysis, two estimates were used for the number of States that already have a review and approval process that would include information on corrosion control issues: 14 States for a high end of the cost range and 31 States for a low end. Under the alternative in which only the 14 States with explicit review and approval are excluded from the count, 53,372 systems (of 72,213 CWSs and NTNCWSs based on 4th quarter 2004 SDWIS/FED) may incur costs for the regulatory change. Under the alternative in which States with permitting and plan review are also excluded from the count, 27,615 systems may incur costs for this regulatory provision.

An estimate was also needed of the number of systems projected to

undertake a long-term treatment change or add a source annually in order to estimate the cost of this provision to utilities. Long-term treatment changes over the next several years are likely as systems will be faced with new regulatory requirements, including changes to comply with the promulgated Arsenic Rule, the Long Term 2 Surface Water Treatment Rule (LT2) and the Stage 2 Disinfectants/Disinfection Byproducts Rule (Stage 2 D/DBP). EPA estimated the number of systems that would undertake treatment changes for the following new regulatory requirements:

- Arsenic—4,100 systems (Data source: *Arsenic in Drinking Water Rule Economic Analysis*, pp. 6–25, 6–27, U.S. EPA, 2000a);
- LT2—2,882 systems (Data source: *Economic Analysis for the Final Long Term 2 Enhanced Surface Water Treatment Rule*, Exhibit 6–1, page 6–3, U.S. EPA, 2005a);
- Stage 2 D/DBP—2,261 systems (Data source: *Economic Analysis for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule*, Exhibit ES–7a, page ES–17, U.S. EPA, 2005b).

Together, these regulatory requirements are estimated to cause 9,243 systems to institute a treatment change, although not all of these treatment changes will affect corrosion control. Additionally, the compliance periods for these regulations varies. For example, the Stage 2 D/DBP and LT2 treatment changes are projected to take place within a six year compliance period for large systems (with the possibility of two-year extension) and eight years for small systems (with the possibility of two-year extension). To account for these expected treatment changes, and to account for treatment changes unrelated to the Arsenic, LT2, and Stage 2 D/DBP rules, EPA assumed (based on the projected rule-related treatment changes and expert judgment) that approximately 20 percent of the systems affected by the LCR will institute a treatment change in the next 10 years. For purposes of this analysis, it is assumed that these changes will occur uniformly over that 10-year period, so that approximately one-tenth of these systems (or two percent of the total) institute a treatment change each year.

Using the two percent estimate, 1,067 (53,372 × .02) systems each year will report a treatment change or source addition. However, systems in States that already have a permitting or plan approval process in place will not incur additional costs to report the treatment change or source addition, since their States already require them to report

treatment changes or source additions through these processes. The annual estimate of the number of systems in States that currently do not have a permitting or plan approval process in place and that will, therefore, incur costs is 552.

EPA anticipates that systems will incur additional costs under this rule change as systems and States more carefully review and consider possible corrosion impacts of treatment changes or source additions. In the absence of information on the current prevalence of these activities, EPA has used best professional judgment to estimate the range of potential activities and associated costs resulting from the review and approval process. All systems, regardless of size or complexity, are assumed to undertake additional activities related to data collection and evaluation, preparation of a submittal to the State, and coordination with the State. For small systems or systems making relatively simple changes, considering the corrosion impacts of the change may be a rather basic process of reviewing water quality data and previous lead monitoring results. For these systems, additional effort will be incurred by system staff in coordinating with State personnel to assemble water quality parameter and lead data and evaluate the potential impacts. EPA estimates the burden for this additional effort at 7.5 hours per system, at an average cost of \$231 per system. For larger or more complex systems making major treatment changes, activities would be more extensive, including conducting engineering studies to evaluate impacts on corrosion control. Based on best professional judgment, EPA estimates that between 10 percent and 20 percent of medium and large systems may need to conduct additional engineering studies on corrosion impacts at a cost of \$20,000. To some extent, systems may already evaluate the impacts of treatment or source changes on corrosion. EPA has considered these current activities in estimating the portion of systems that would require an engineering study.

#### 3. Costs to States

The direct costs to States are estimated to range from \$163,000 to \$348,000 annually. These direct costs are strictly labor costs; materials costs are expected to be negligible. Estimates are summarized in Table IV.4. Activities that States will undertake include review of system data, preparation of conclusions and letters to systems, and coordination with utilities. Because the level of effort associated with these

activities is expected to vary based on the complexity of the change and the type of submittal (amount and type of information), EPA included a range of State review time from four to eight hours.

Those States incurring additional costs due to Regulatory Change III.D are

those that do not already have a review and approval process that considers the corrosion control implications of treatment changes. For the States that will incur new costs as they review and approve changes before they are made, rather than simple review after the change has been made, which is the

existing requirement, new State activities will include review of the system data on the corrosion control implications of a long-term treatment or source change prior to a change, preparation of conclusions and coordination with utilities.

TABLE IV.4.—ESTIMATED DIRECT COSTS TO SYSTEMS AND STATE/PRIMACY AGENCIES ASSOCIATED WITH REGULATORY CHANGE III.D (2006 DOLLARS)

	Annual cost— low estimate <sup>1</sup>	Annual cost— high estimate <sup>2</sup>
Costs to Systems:		
Reporting .....	\$506,000	\$765,000
Total System Costs .....	506,000	765,000
Costs to State/Primacy Agencies:		
Review Costs .....	163,000	348,000
Total State Costs .....	163,000	348,000

Notes: 1. 10 percent medium and large systems conduct engineering study and 4 hours for State review.  
2. 20 percent medium and large systems conduct engineering study and 8 hours for State review.

G. Direct Costs Associated With Regulatory Change III.E

1. Activities Resulting From Regulatory Change

Regulatory Change III.E requires CWSs to provide written notification to each owner/occupant of the lead level found in the tap sample collected for LCR compliance monitoring. Compliance for NTNCWSs will be determined by their circumstances and may consist of posting a notice on community bulletin boards or Web sites. Systems must also prepare a letter that self-certifies that they have distributed the sampling results as appropriate and submit it to the State. While States may review sample customer letters/notices from each utility for each monitoring period, such a review is not required by the regulatory change and thus is not considered a direct cost of the

regulatory change. States will be required to review, track, and store the self-certification letters. Supporting calculations and information regarding costs to utilities and States associated with this regulatory change are included in the Economic Analysis, Appendix E.

2. Costs to Utilities

The direct costs to utilities for compliance with Regulatory Change III.E are summarized in Table IV.5 and estimated to be \$1,248,000 annually including \$1,098,000 in labor costs and \$150,000 in materials costs for envelopes and postage. This is based on an estimated 310,510 notices being provided to customers each year, with associated labor. Detailed estimates are provided in the Economic Analysis, Appendix E-2.

In order to estimate the additional costs associated with Regulatory Change III.E, an estimate is needed of the

number of systems that already notify customers of tap monitoring results. Based on feedback from participants in workshops and interactions with States, some systems already notify customers of monitoring results. These systems would not incur costs under the regulatory change. Of 72,213 CWSs and NTNCWSs (per 4th quarter 2004 SDWIS/FED) subject to the LCR, EPA estimates that approximately 11 percent of these systems are estimated to already notify owner/occupants of tap sample results. Therefore, this regulatory change will apply to the remaining 89 percent of systems.

3. Costs to States

The direct costs to States to comply with Regulatory Change III.E are presented in Table IV.5. States are required to review, track, and store the self-certification letters.

TABLE IV.5.—SUMMARY OF DIRECT COSTS ASSOCIATED WITH REGULATORY CHANGE III.E (2006 DOLLARS)

	Annual labor	Annual materials	Total annual
Costs to Systems:			
Customer Notice of Lead Results Costs and self-certification letters .....	\$1,098,000	\$150,000	\$1,248,000
Total System Costs .....	1,098,000	150,000	1,248,000
Costs to States:			
Review, track and store self-certification letters .....	163,000	.....	163,000
Total State Costs .....	163,000	.....	163,000

H. Direct Costs Associated With Regulatory Change III.F

Regulatory Change III.F changes the public education requirements of the

Lead and Copper Rule (LCR) in § 141.85. Water systems would still be required to deliver public education materials after a lead action level exceedance, but the

text of the message to be provided to consumers, how the materials are delivered to consumers, and the timeframe in which materials must be

delivered would change. The changes to the delivery requirements include additions to the list of organizations systems must partner with to disseminate the message to at-risk populations as well as changes to the media used to ensure water systems

reach consumers when there is an action level exceedance. Table IV.6 presents a summary of the additional activities for reaching at-risk populations and the associated annual costs per system.  
In addition to the changes to § 141.85 of the LCR, EPA is also revising

§ 141.154(d) of the CCR rule (40 CFR 141, Subpart O), which requires all community water systems to send an annual report to billed customers containing information relevant to the quality of the drinking water provided by the system.

TABLE IV.6.—ANNUAL COST PER SYSTEM ESTIMATE FOR ADDITIONAL ACTIVITIES TO BETTER REACH AT-RISK POPULATIONS (2006 DOLLARS)

System size category	i. Public service announcements	ii. Paid advertisements	iii. Display in public areas	iv. Internet notification	v. Public meetings	vi. Delivery to every household	vii. Targeted contact	viii. Materials directly to multi-family & institutions	Average per system all activities
25–100 .....	\$98	\$105	\$24	\$24	\$48	\$7	\$34	\$12	\$44
101–500 .....	101	105	26	26	51	30	35	15	49
501–3,300 .....	105	180	111	28	55	166	37	27	89
3.3K–10K .....	118	180	137	420	900	435	44	81	289
10K–50K .....	1,400	850	696	596	2,400	1,114	66	303	928
50K–100K .....	1,400	5,000	1,392	596	3,000	2,448	138	945	1,865
>100K .....	1,400	5,000	3,943	1,035	5,000	3,874	563	5,035	3,231

Details of how these unit costs were calculated are provided in Appendices H–6 through H–20 of the Economic Analysis for this final rule.

States are required to review the language in the utility’s notice to consumers to make sure the utility is including the required information. States are also required to consult with each system with an action level exceedance. States will no longer be required to approve a waiver for notifications for each system that exceeds the lead action level that serves a population of 501–3,300.

2. Costs to Utilities

The annual direct costs to utilities resulting from Regulatory Change III.F are estimated to be \$859,200. The

annual system labor cost is estimated to be \$837,900 and the annual system materials are estimated to cost \$21,200. Estimates of costs associated with each activity are presented in Table IV.7. Detailed estimates of costs to utilities are provided in the Economic Analysis, Appendix F.

The requirement to provide information about lead in the CCR is new only for systems that currently do not detect lead above the action level in 95 percent or more of their sites, since systems in which the 95th percentile result is above the action level are already required to provide such information. However, EPA does not have data on such systems. Rather, EPA has data on the (smaller) number of systems that currently detect lead below

the action level in 90 percent of their sites, and has subtracted this value from the universe of systems to estimate the number of systems that would incur new costs under this requirement. Underestimating the current baseline of systems that currently detect lead at the 95th percentile level, by using data on systems that detect lead at the 90th percentile level (a smaller number of systems), overestimates the remaining number of systems that do not currently report lead information in their CCR. EPA’s estimate assumes that 52,257 additional systems would have to provide information about lead in their CCR each year, with an additional associated labor of 0.25 hours per system per year.

TABLE IV.7.—SUMMARY OF COSTS TO SYSTEMS DUE TO LCR PUBLIC EDUCATION CHANGES (2006 DOLLARS)

Activity	Requirement	Annual labor	Annual materials	Total system cost
<b>a. Changes to the Mandatory Text of the Written Materials:</b>				
III.F(a)(1) .....	Customer Notification .....	\$91,400	\$0	\$91,400
<b>b. Changes to Better Reach At-Risk Populations:</b>				
III.F(b)(1) .....	Notify Additional Organizations .....	21,900	21,400	43,300
III.F(b)(2) .....	Additional Activities i–viii .....	292,700	0	292,700
III.F(b)(2) .....	Consult with State on Activities .....	33,500	300	33,700
<b>c. Changes to Help Systems Maintain Communication with Consumers Throughout the Exceedance:</b>				
III.F(c)(1) .....	Customer Bills .....	47,400	0	47,400
III.F(c)(2) .....	Post on Website .....	100	0	100
III.F(c)(3) .....	PSAs and Press Releases .....	–3,700	–500	–4,200
<b>d. Changes to the Required Timing:</b>				

TABLE IV.7.—SUMMARY OF COSTS TO SYSTEMS DUE TO LCR PUBLIC EDUCATION CHANGES (2006 DOLLARS)—  
Continued

Activity	Requirement	Annual labor	Annual materials	Total system cost
No cost impact				
<b>e. Changes to Consumer Confidence Report:</b>				
III.F(e)(1) .....	CCR Statement .....	354,600	0	354,600
<b>Total Costs to Systems for PE Requirements (III.F):</b>				
Total .....		837,900	21,200	859,200

Note: Totals may not add due to rounding.

3. Costs to States to be \$63,000. These costs are the annual State labor costs; no materials cost is expected. These costs are presented in Table IV.8. Detailed estimates of costs to States are provided in the Economic Analysis, Appendix F.

The direct costs to States as a result of Regulatory Change III.F are estimated

TABLE IV.8.—SUMMARY OF COSTS TO STATES DUE TO LCR PUBLIC EDUCATION CHANGES (2006 DOLLARS)

	Annual labor	Annual materials	Total annual
III.F Costs to States:			
Review and consultation .....	\$63,000	\$0	\$63,000
III.F Total State Costs .....	63,000	0	63,000

*I. Direct Costs Associated With Regulatory Change III.G*

1. Activities Resulting From Regulatory Change

Under this regulatory change, utilities that have 90th percentile LCR samples that exceed the lead action level will need to identify all lead service lines (LSL) that had previously been determined to be replaced via sampling. These utilities will be affected by Regulatory Change III.G if they exceed the action level again and renew a LSL replacement program. These utilities must put these “tested out” LSLs back into their inventory of lead service lines that could be considered for replacement. To estimate the impact of this change, we assume these formerly “tested out” LSLs will be retested and that some of them will exceed the lead action level. The primary activities as a result of this regulatory change include collecting and analyzing samples from these LSLs. Replacement of lines that were previously tested out may also occur as a result of this change.

2. Costs to Utilities

The direct costs to utilities as a result of Regulatory Change III.G are estimated to be \$110,000 annually, which includes \$101,000 in labor costs and \$9,000 in materials costs. Detailed estimates of costs to utilities are provided in the Economic Analysis, Appendix F.

Estimating the costs to utilities requires an estimate of the number of systems who have been involved in a lead service line replacement program, the number of systems likely to discontinue such a program due to low tested lead levels, and the fraction of those systems likely to subsequently exceed the action level and restart their lead service line replacement program.

In the responses to the 50-State survey on lead implementation (U.S. EPA, 2004b), which is available in the public docket for this rulemaking, 11 States responded that at least one system in their State has been involved in a lead service line replacement program. Six States provided sufficient information to derive the number of systems within that State required to perform lead service line replacement—a total of 28 systems. Based on an average of five systems per State for the six States that provided data, for purposes of this analysis, EPA assumes that the remaining five States have five systems, plus one system for DC (which did not respond to the survey) for a total of 54 systems that have been required to perform lead service line replacement.

Because there is insufficient information to determine how many of the 54 systems suspended their lead replacement programs, and later restarted the programs due to an exceedance, EPA assumed the worst case scenario that all of these systems

suspended their lead replacement programs and that the rate of subsequent exceedance was the same as for the universe of systems subject to the LCR, as shown in Table IV.2. Thus, EPA assumed that 1.4 percent of the 54 systems or one system will exceed the action level and will therefore be triggered back into lead service line replacement each year.

EPA does not have information on the number of systems using the test out provisions rather than physically replacing lines, so this approach likely overestimates the number of affected systems, because it assumes that all systems in a lead service line replacement program are using the test out provisions. Systems removing lead service lines are not impacted by this change. While the rate at which systems are triggered back into lead service line replacement might be higher than the initial rate, it is offset by the assumptions regarding systems using the test out provisions and the universe of systems that would stop their lead service line replacement program and later resume it because of this regulatory change. Please see the Economic Analysis for the final rule, Appendix F, for additional details on the assumptions EPA made to derive the estimated costs for this provision.

3. Costs to States

No direct costs are projected for States as a result of Regulatory Change III.G. Although the States will review utility LSL replacement program annual

reports, these costs are attributed to the 1991 LCR rather than this rule.

J. Summary of National Average Annual Direct Costs

The estimates of annual direct costs for the final regulatory changes are presented in Table IV.9.

TABLE IV.9.—SUMMARY OF ANNUAL DIRECT COSTS TO SYSTEMS AND STATES FROM ALL REGULATORY CHANGES (2006 DOLLARS)<sup>1</sup>

Regulatory change	Annual direct costs to systems				Annual direct costs to states	Total annual direct costs
	Reporting	Monitoring	Consumer notice	Total		
III.A						
III.B						
III.C	\$61,000	\$2,635,000		\$2,696,000	\$82,000	\$2,778,000
III.D Low	506,000			506,000	163,000	669,000
III.D High	765,000			765,000	348,000	1,113,000
III.E	136,000		1,112,000	1,248,000	163,000	1,411,000
III.F	34,000		825,000	859,000	63,000	922,000
III.G		110,000		110,000		110,000
Total Low	736,000			5,418,000	471,000	5,890,000
Total High	995,000	2,745,000	1,938,000	5,677,000	657,000	6,335,000

Notes: 1. Totals may not add due to independent rounding.

K. Total Upfront Costs To Review and Implement Regulatory Changes

1. Activities Resulting From Regulatory Change

Systems and States will incur one-time upfront costs associated with reviewing and implementing this rule. For systems, activities include reviewing the rule changes, training staff, and verification costs associated with Regulatory Change III.A. For States/Primacy Agencies, activities include regulation adoption, program development, and miscellaneous training.

2. Total Costs to Utilities

Direct costs to utilities are estimated to be approximately \$11 million, as summarized in Table IV.10. Detailed estimates of costs to utilities are provided in the Economic Analysis Appendix G. Direct costs to utilities are based solely on labor; no materials costs are expected for these one-time upfront costs.

3. Total Costs to States

Direct costs to the States are estimated to be \$1,650,000 as summarized in Table IV.10 and detailed in Appendix G of the Economic Analysis. Similar to the one-time costs for utilities, these direct costs are based solely on upfront labor costs. Fifty-seven States will review and implement these LCR revisions.

TABLE IV.10.—SUMMARY OF ONE-TIME DIRECT COSTS ASSOCIATED WITH RULE REVIEW AND IMPLEMENTATION (2006 DOLLARS)

	One time labor costs
Costs to Systems: Review & Communication Verification (III.A) .....	\$10,971,000 104,000
Total System Costs: .....	11,075,000
Costs to State/Primacy Agencies: Regulation Adoption .....	1,488,000 162,000
Verification (III.A) .....	
Total State Costs .....	1,650,000
Total Rule Implementa- tion Costs .....	12,725,000

L. Indirect Costs

Previous sections focused on the direct costs of this rulemaking, costs resulting from activities specified by the rule change, such as costs for additional monitoring or distribution of consumer notices. A second type of cost, an indirect cost, may also result when systems and States use the information generated by the rule-required activities to modify or enhance practices to reduce lead levels. Indirect costs may also result if systems or States decide to undertake additional information-gathering activities not required by the rule.

The revisions will require some systems to generate new information

which, in some cases, may be provided to States and customers. The information that is generated may suggest lead and copper risks that would not otherwise have been discovered (or such risks might be discovered sooner than otherwise). Upon obtaining this information, a system itself, the State, or some of the system's customers may take actions to address these risks, incurring the costs of those actions. For example, a system may redesign a planned treatment change following State review of the planned change, or a system may replace a lead service line that was previously "tested out." System customers, upon receiving notification of the lead content of their tap samples, may take some action, and in the process, incur a cost.

It is both difficult to project what the content will be of the information generated pursuant to the regulation, and difficult to predict how systems and individuals might act in response to the new information generated as a result of these regulatory changes. Because of the uncertainty in tracing the linkages from the regulation to new information to exposure prevention measures, EPA is unable to quantify the indirect costs that might ensue from these regulatory changes.

It is also possible that some additional information-gathering activities may result from this rule. For example, a system may decide to undertake a new study of the corrosion implications of a rule change. Or a State may decide to

review sample system customer letters of notification to owner/occupants about the lead levels found in their collected tap samples. These activities would also result in indirect costs associated with this final rule.

#### M. Benefits

The intent of this rulemaking is to improve implementation of the lead and copper regulations by clarifying monitoring requirements, improving customer awareness, and modifying the lead service line test out procedure. These revisions do not affect the action levels, corrosion control requirements, lead service line replacement requirements, or other provisions in the existing rule that directly determine the degree to which the rule reduces risks from lead and copper.

However, the increase in administrative activities that will result from the revisions will generate new information (e.g., more monitoring data, some of which may show exceedances), and may prompt some systems or individuals to respond to this new information by taking measures to abate lead and copper exposures and thus reduce the associated risk. Also, the requirement that long-term treatment changes be approved by the State prior to implementation will provide an additional opportunity to identify possible adverse impacts due to treatment changes, which may lower the risk to consumers.

Because the precise impact of these revisions on the behavior of individuals and systems is not known, EPA has not quantified the changes in associated health benefits. However, EPA does expect that overall benefits from the LCR will increase as a result of the indirect effects of the revisions on the actions of individual consumers and systems.

#### N. What Were the Key Issues Raised by Commenters on the State and System Burden Estimates (Economic Analysis) and EPA's Response to These Issues?

Many commenters stated that EPA underestimated the overall burden of the proposed rule, both for systems and for States. Many commenters thought, for example, that both systems and States would need more time to read and understand the rule. EPA agrees with these commenters and has revised the burden and cost estimates for some sections of the rule, and for the implementation activities. In particular, EPA made an upward revision to the burden estimate for the larger systems, estimating that it would take them an average of 40 hours to read, understand, and communicate the rule's significance

to required personnel. EPA also reviewed and revised the State implementation burden and cost, significantly increasing these estimates (from 312 hours to 600 hours).

One commenter stated that some NTNCWSs (e.g., schools, child care centers, and small businesses) do not have staff to satisfactorily implement new drinking water rules and respond to public inquiries regarding lead in drinking water. EPA agrees with this comment and has increased the state burden assumptions for this final rule. EPA recognizes that "operators" at NTNCWSs typically have many other job functions and are often not professional water system managers, and that States, therefore, must continually educate, assist, and enforce regulations to ensure compliance. Commenters also stated that EPA underestimated the impact to States regarding the requirement to provide a consumer notice of lead tap water monitoring results. EPA agrees with this comment and has revised the consumer notice estimates to indicate that additional funding will be required for this activity.

Some commenters asserted that EPA did not address the implications for a regulatory program assigned to "approve" rather than simply "review" treatment changes, and specifically that EPA underestimated the costs of requiring advanced State approval. Commenters also thought that every PWS would need to have additional and more intensive interaction with the State prior to making any change in water treatment or source water. While the Agency agrees with this comment, EPA has narrowed the scope of this provision in the final rule to only long-term changes in treatment. Since this will considerably reduce the potential burden of the requirement by removing the daily water quality treatment changes from consideration, EPA is not revising the cost estimate for this change from the proposal.

#### V. Statutory and Executive Order Requirements

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA has prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the *Economic and Supporting Analyses: Short-Term Regulatory Changes to the Lead and Copper Rule* (U.S. EPA, 2007a). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized in section IV of this notice.

##### B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

EPA requires comprehensive and current information on lead and copper contamination and associated enforcement activities to implement its program oversight and enforcement responsibilities mandated by the Safe Drinking Water Act (SDWA). Highly publicized incidences of elevated drinking water lead levels prompted EPA to review and evaluate the implementation and effectiveness of the LCR on a national basis. As a result of this multi-part review, EPA identified seven targeted rule changes that clarify the intent of the LCR and ensure and enhance protection of public health through reduction in lead exposure. EPA will use the information collected as a result of the short-term revisions to the LCR to support the responsibilities outlined in SDWA by strengthening the implementation of the LCR in the areas of monitoring, customer awareness, and lead service line replacement. The rule revisions described in section III of this notice are intended to improve the implementation of the LCR and do not alter the original maximum contaminant level goals or the fundamental approach to controlling lead and copper in drinking water.

Section 1401(1)(D) of SDWA requires that there must be "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system \* \* \*" Furthermore, section 1445(a)(1) of SDWA requires that every person who is a supplier of water "shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may

reasonably require by regulation to assist the Administrator in establishing regulations \* \* \* in determining whether such person has acted or is acting in compliance” with this title. In addition, section 1413(a)(3) of SDWA requires States to “keep such records and make such reports \* \* \* as the Administrator may require by regulation.”

Section 1412(b) of SDWA, as amended in 1996, requires the Agency to publish maximum contaminant level goals and promulgate NPDWRs for contaminants that may have an adverse effect on the health of persons, are known to or anticipated to occur in PWSs, or, in the opinion of the Administrator, present an opportunity for health risk reduction. The NPDWRs specify maximum contaminant levels or treatment techniques for drinking water contaminants (42 U.S.C 300g.-1). Section 1412(b)(9) requires that EPA, no

less than every 6 years review, and as appropriate, revise existing drinking water standards. Promulgation of the LCR complies with these statutory requirements.

1. Burden Estimate

The universe of respondents for this ICR is comprised of 52,838 CWSs and 19,375 NTNCWSs, for a total of 72,213 systems (4th Quarter 2004 SDWIS/FED), and 57 States. The activities that take place during the 3-year period covered by the ICR will vary based on the timing of State implementation of the final rule. The rule is structured to allow for early implementation by States within 180 days of rule publication. Alternatively, States have up to 2 years to implement rule provisions as described in section III.I of this notice. Because there is some uncertainty in predicting which States will adopt early implementation versus those that will take 2 years, EPA estimates an upper

and lower bound on ICR burden and cost estimates. The upper bound estimate assumes all States will adopt early implementation while the lower bound estimate assumes States will take 2 years to implement the rule.

The total annual average respondent burden associated with this ICR is estimated to be 206,997–297,122 burden hours. The corresponding total annual average respondent costs are estimated to be \$6.4 to \$9.5 million.

EPA estimates the annual respondent burden for PWSs to be 189,369–271,997 hours. Annual respondent costs for PWSs are estimated to be \$5.6 to \$8.4 million. The Agency estimates that the annual respondent burden for States is 17,628–25,125 hours. The corresponding annual average respondent costs for States are estimated to be \$0.8 to \$1.1 million. Table V.1 presents a summary of total burden and costs for this ICR.

TABLE V.1.—BOTTOM LINE AVERAGE ANNUAL BURDEN AND COSTS UPPER AND LOWER BOUND ESTIMATES (2006 DOLLARS)

	Lower bound	Upper bound	
Number of Respondents .....	72,270 = 72,213 + 57	72,270 = 72,213 + 57	Public water systems. States.
Total Annual Responses .....	186,524 = 171,849 + 14,675	426,483 = 391,671 + 34,812	Public water system responses. State responses.
Number of Responses per PWS ..	2.4 = 171,849/72,213	5.4 = 391,671/72,213	Total annual PWS responses from above.
Number of Responses per State ..	257 = 14,675/57	611 = 34,812/57	Total public water systems from above.
Total Annual Respondent Burden Hours.	206,997 = 189,369 + 17,628	297,122 = 271,997 + 25,125	Total annual State responses from above.
Hours per System for Public Water Systems.	2.6 = 189,369/72,213	3.8 = 271,997/72,213	Total States from above.
Hours per State for States .....	309 = 17,628/57	441 = 25,125/57	Public water system hours. State hours.
Annual O&M Costs .....	\$118,717 = \$117,886 + \$831	\$295,205 = \$293,920 + \$1,284	Total PWS annual hours from above.
Total Annual Respondent Cost .....	\$6,353,532 = \$5,584,289 + \$769,243	\$9,520,866 = \$8,423,108 + \$1,097,758	Total PWS from above.
Cost Per Response .....	\$32 \$52	\$21 \$32	Total State annual hours from above.
Total Annual Hours (respondent plus Agency).	206,997 = 206,997 + 0	297,122 = 297,122 + 0	Total States from above.
Total Annual Cost (respondent plus Agency).	\$6,353,532 = \$6,353,532 + \$0	\$9,520,866 = \$9,520,866 + \$0	Public water system O&M costs. State OM costs.
			Public water system costs. State costs.
			Public water system cost. State cost.
			Total respondent hours. Total EPA hours.
			Total respondent cost. Total EPA cost.

Note: Detail may not add exactly to total due to independent rounding. EPA burden and cost estimated under PWSS program.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

**C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined under the RFA as: (1) A small business as defined by the Small Business Administration's (SBA)

regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)-(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of this rule on small entities, EPA defined small entities as public water systems serving 10,000 or fewer persons. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (63 FR

7606, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). EPA stated in that Final Rule that it would apply the alternative definition to future drinking water regulations (including this one) as well.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based on EPA's established definition of small entities as public water systems serving 10,000 or fewer persons. The small entities directly regulated by this final rule are small public water systems serving 10,000 or fewer people on an annual basis. We have determined that 68,286 small systems may be affected by the changes to the LCR. Table V.2 provides a summary of these small systems, by size category and system type.

TABLE V.2.—THE NUMBER OF SMALL SYSTEMS AFFECTED BY THE FINAL RULE CHANGES

Size	CWS	NTNCWS	Total small
<=100 .....	13,766	9,548	23,314
101–500 .....	16,240	6,997	23,237
501–1,000 .....	5,914	1,925	7,839
1,001–3,300 .....	8,298	795	9,093
3,301–10,000 .....	4,707	96	4,803
<b>Total .....</b>	<b>48,925</b>	<b>19,361</b>	<b>68,286</b>

However, not all of these small entities will incur direct costs for all of the final regulatory changes. In many cases, only a relatively small subset of these systems will have to change practices to comply with the regulatory changes. Table V.3 provides an estimate of the number of small systems that will incur direct costs for each of the regulatory changes.

TABLE V.3.—THE NUMBER OF SMALL SYSTEMS AFFECTED BY EACH REGULATORY CHANGE

Regulatory change	Small systems impacted per year
Regulatory Change III.A .....	3,692
Regulatory Change III.B .....	(1)
Regulatory Change III.C .....	854
Regulatory Change III.D .....	1,009
Regulatory Change III.E .....	60,735
Regulatory Change III.F .....	49,337
Regulatory Change III.G .....	1

<sup>1</sup> None—Clarifications of definitions with no direct cost impact.

**Activities and Costs Associated With Rule Changes for Small Systems**

EPA has estimated the burden and costs associated with the regulatory changes, as described in the Economic Analysis for this final rule. The basis for many of these input values and assumptions are described in detail in the Economic Analysis, Section 4. The following summarizes the costs estimated for small systems.

1. One-Time Activities

All small systems subject to the Lead and Copper Rule will be expected to incur some costs to read the rule changes and communicate requirements as necessary. The level of effort associated with these activities could range from 5–8 hours for each small system. The average cost per system for these activities is estimated at \$138, for a total cost of \$9,404,000 for all 68,286 small systems. This assumes an hourly fully loaded labor cost for small system employees ranging from \$23.86 to

\$33.96 (see Appendix B of the Economic Analysis).

2. Activities for Regulatory Change III.A

Under Regulatory Change III.A, small systems with fewer than 5 taps in States that allow 1 sample per tap will prepare and submit to the State a one-time letter verifying the applicable number of taps and requesting the use of the alternative sampling. Eleven States supported the alternative sampling in their comments on the proposed rule. However, two States did not support the alternative sampling. For purposes of estimating costs, EPA assumed that the States that did not support the alternative and States that did not comment on the rule provision would not allow systems to implement the alternative since the default requirement in the rule is that systems take a minimum of 5 samples. Based on data from SDWIS/FED on these 11 States, EPA estimates that there are 3,692 systems with fewer than 5 taps. Preparing the one-time request letter results in a one time cost of \$28

per system. Total costs for all small systems likely to be affected by Regulatory Change III.A are estimated at \$104,000 per year.

3. Activities for Regulatory Change III.C

Under Regulatory Change III.C, all systems that exceed the lead action level are triggered into regularly scheduled lead tap monitoring. Additional costs are associated with taking lead samples more frequently and reporting the results to States. EPA estimates that 854 small systems exceed the lead action level each year. Changing from reduced tap monitoring to regularly scheduled tap monitoring would result in an average cost increase of \$2,258 per year per system. Total costs for all small systems likely to be affected by Regulatory Change III.C are estimated at \$1,929,000 per year.

4. Activities for Regulatory Change III.D

Small systems that are changing treatment or adding a source would incur additional costs under Regulatory Change III.D to prepare data in support of treatment changes or source addition, to submit the data to the State for review, and to coordinate with the State during the review. These activities are estimated to take an additional 7.5 hours per system for each treatment change or source addition. The cost for each small system that is changing treatment or adding a source is estimated at \$196. The total cost for all small systems likely to be affected by

Regulatory Change III.D is estimated at \$198,000 per year.

5. Activities for Regulatory Change III.E

Most small systems are expected to incur additional costs under Regulatory Change III.E when they are required to notify consumers of tap monitoring results. The activities associated with notifying customers vary based on the type and size of the system and include the effort to prepare a self-certification letter to the State. The average cost for small systems to notify customers is estimated at approximately \$17 annually. This estimate assumes one labor hour to prepare a customer notification letter per system, 0.12 hours to prepare the self-certification letter, and \$0.43 in material costs per sample for CWSs. EPA assumed one labor hour plus 0.12 hours for NTNCWSs, with negligible material costs. It is important to note that the majority of small systems are assumed to meet the lead action level and are assumed to be on triennial monitoring. Therefore, this requirement will only affect them once every three years. The total cost to all small systems likely to be affected by Regulatory Change III.E is estimated at \$1,060,000.

6. Activities for Regulatory Change III.F

Different provisions of Regulatory Change III.F apply to different subsets of systems. All small community water systems will incur costs to include a statement on lead in the Consumer

Confidence Report (CCR), at an average cost of \$7 per system, based on the assumption of 0.25 hours to add an informational statement on lead to the CCR. Small community water systems that exceed the lead action level will incur costs from a variety of public education activities, at an average cost per system of \$265. The total cost for all small systems likely to be affected by Regulatory Change III.F is estimated at \$569,000.

7. Activities for Regulatory Change III.G

Regulatory Change III.G applies to systems that had "tested out" lead service lines as part of a lead service line replacement program and then re-exceeded the action level. For the purposes of subsequent lead service line replacement efforts, the previously "tested-out" lines would go back into the inventory for possible re-testing and/or replacement. Only a handful of systems are expected to be in this situation, estimated at 1 system per year. This analysis assumes that the 1 system is not a small system. There is no evidence that small systems would be triggered into this regulatory change cost any more frequently than other systems.

8. Total Small System Costs

Table V.4 summarizes the estimated annual costs associated with all regulatory changes. Table V.5 summarizes the one-time costs to small systems.

TABLE V.4.—TOTAL ESTIMATED ANNUAL SMALL SYSTEM COSTS (2006 DOLLARS) ALL SYSTEMS SERVING LESS THAN 10,000 PEOPLE

	Annual labor	Annual materials	Total annual
Regulatory Change III.A .....	0	0	0
Regulatory Change III.B .....	0	0	0
Regulatory Change III.C .....	1,783,000	146,000	1,929,000
Regulatory Change III.D .....	198,000	0	198,000
Regulatory Change III.E .....	946,000	114,000	1,060,000
Regulatory Change III.F .....	566,000	4,000	569,000
Regulatory Change III.G .....	0	0	0
Total .....	3,492,000	264,000	3,755,000

**Note:** Detail may not add exactly to total due to independent rounding. Because this table represents annual costs, some fields include zero values. While there are regulatory costs associated with Regulatory Change III.A, these costs are one-time in nature and thus do not include any annual costs.

TABLE V.5.—TOTAL ESTIMATED ONE-TIME SMALL SYSTEM COSTS (2006 DOLLARS) ALL SYSTEMS SERVING LESS THAN 10,000 PEOPLE

	One-time costs
Regulatory Change III.A .....	\$104,000
Implementation .....	9,404,000

TABLE V.5.—TOTAL ESTIMATED ONE-TIME SMALL SYSTEM COSTS (2006 DOLLARS) ALL SYSTEMS SERVING LESS THAN 10,000 PEOPLE—Continued

	One-time costs
Total .....	9,508,000

9. Average Costs Per Small System

The estimated average compliance cost for all small systems covered by the LCR for the final rule changes is minimal: \$55 per system in annual costs. However, there is a fairly wide range in the costs that a system could face. EPA expects that all systems will incur the \$138 one-time implementation cost. The additional annual costs could

be as low as \$0 for small NTNCWSs that already notify customers of tap monitoring results. Systems that do not already notify customers of results could incur \$17 per year. EPA estimates that small CWSs will incur \$7 per year to include a statement on the CCR. The roughly 2 percent of systems that are making a treatment change or source addition are estimated to incur an additional \$196 in the year they make the change.

At the high end, if a system incurred all estimated annual costs, the total would be \$2,743 per year. As EPA estimates that only 854 small systems will exceed the lead action level, at most only 854 small systems or 1.3 percent of all small systems could potentially incur all estimated annual costs. Those systems that do not exceed the lead action level face a maximum potential annual cost of \$220.

10. Measuring Significant Economic Impact of Rule Costs

The costs to small systems are compared against average revenues for small systems from all revenue sources. Small systems can be one of three types

of small entities—small businesses, small governments, or small non-profits. The revenue estimate used for assessing impacts to small systems in this rule is derived from two sources: (1) EPA’s 2000 Community Water System Survey (CWSS) and (2) the 2002 Census of Governments. Data from these two sources are used to calculate an average revenue estimate for all small systems serving less than 10,000 customers and for each of 3 size categories: Those serving 25–500 customers, those serving 501–3300 customers, and those serving 3301–10,000 customers. Analyzing impacts separately for these 3 categories of small systems allows EPA to better identify potential impacts to the smallest systems, which tend to have the lowest revenues. Estimates of total revenue are shown in Table V.6 and reflect updates to EPA’s revenue analysis in the proposed rule. For more information on EPA’s revenue estimates for the small system size subcategories, please see the Economic Analysis for the final rule.

Using average revenues and the average cost of the regulatory changes for all small systems, the one-time costs

represent roughly 0.006 percent of annual revenues from all revenue sources. The estimated \$55 average annual compliance costs per system represent 0.003 percent of average annual revenues from all revenue sources. EPA estimates that roughly 1.3 percent of the systems serving 10,000 or less customers would incur all annual costs of \$2,743, which is approximately 0.127 percent of annual revenues from all sources.

Costs as a percentage of revenues for the 3 size categories separately are shown in Table V.6. This table compares the average costs of the regulatory changes to the average revenues. As shown in Table V.6, average economic impacts to small systems from these regulatory revisions are all less than one percent of average revenue for each of the small system size subcategories. However, as discussed in section V.C.1 of this notice, substantial data limitations exist in our revenue data which may limit our ability to accurately describe the revenues available to small water systems.

TABLE V.6.—AVERAGE COSTS PER SYSTEM AND PERCENTAGE OF REVENUE  
[All revenue sources (2006\$)]

System size	Number of systems	Average annual cost per system	Revenues per system*	Average annual cost as percentage of revenue
25–500 .....	46,551	\$41	**\$550,000	0.007
501–3,300 .....	16,932	67	1,448,000	0.005
3,301–10K .....	4,803	153	12,643,000	0.001
Aggregate: 25–10K .....	68,286	55	2,167,000	0.003

**Notes:** \*Includes water revenues and non-water related revenues (e.g., revenues related to the primary business for private entities that operate a water system to support their business or municipal general revenue for publicly owned and operated systems). \*\*Estimated Total Average Revenue per system for systems serving 25–100 is \$220,000.

In summary, the average costs for each of the small size subcategories below 10,000 represent less than 1 percent of average revenue from all sources. To provide additional information on the potential economic impacts of the LCR on small entities, EPA also examined the range of potential costs relative to revenues for the smallest system size category (those serving 25–500 people). Average total annual revenue for this system size is estimated to be \$550,000. As stated above, the maximum number of small systems (serving less than 10,000 people) that could possibly incur all annual total costs of \$2,743 is 854, those that exceed the lead action level. This maximum cost represents approximately 0.5 percent of average revenues from all sources for systems in the smallest size subcategory. However,

because of our limited data on small system revenues, we do not have the ability to develop a distribution of revenues in this subcategory for comparison. For those systems that do not exceed the lead action level, the maximum potential cost that could be incurred by systems in the smallest size category is \$220, or 0.04 percent of revenue from all sources. This analysis further supports our conclusion that this final rule will not have a significant economic impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. For Regulatory Change III.A, EPA added a provision that gives States the discretion to allow water systems with fewer than

5 taps for human consumption to collect one sample per tap. Under this alternative sampling schedule, the sample with the highest test result will be compared to the action level to determine compliance. Taking fewer than 5 samples for each monitoring event will reduce the monitoring burden for small systems while still being protective of public health. Comparing the single highest sample value does not allow water systems to ignore a potential problem by taking repeat samples at taps that have low lead results when they get a high sample result.

Regulatory Change III.C requires systems that exceed the lead action level to resume tap monitoring for lead on a regular basis, rather than on a reduced schedule. Originally EPA considered extending this requirement to both lead

and copper monitoring. Based on guidance from the work group on minimizing impacts to small systems, EPA limited the requirement to only include lead action level exceedances.

Regulatory Change III.E requires systems to provide lead monitoring results to consumers. The regulatory development work group considered including copper monitoring results in the consumer notice, but decided to defer that suggestion for consideration in future regulatory revisions, thereby limiting the increase in burden to small systems.

#### 11. What Were the Key Issues Raised by Commenters on the Regulatory Flexibility Analysis and EPA's Response to These Issues?

EPA received one comment on its Regulatory Flexibility analysis supporting the proposed rule. The commenter agreed with EPA's certification that the LCR will not have a significant economic impact on a substantial number of small entities, but recommended that EPA provide more detailed information concerning the economic impacts of these regulatory changes to subcategories of small entities. In response to this commenter, EPA provided additional information in the final rule on the potential impacts to systems in the three smallest size subcategories (those serving 25–500, 501–3,300, and 3,301 to 10,000 people) and has considered this information in evaluating impacts to small systems.

In certifying that these regulatory changes will not have a significant economic impact on a substantial number of small entities, EPA assessed the economic impacts of this final rule on small water systems by calculating an average revenue estimate for systems serving less than 10,000 customers and comparing it to an average cost estimate for systems serving less than 10,000. EPA then evaluated data on the costs and revenues per system for three small size subcategories as defined in the SDWA for affordability determinations for small systems. EPA believes that for this rule this is a reasonable way to stratify the small system universe by size for purposes of its RFA screening analysis as well. EPA is continuing to examine issues associated with the significant variety of entities that operate small water systems and how best to analyze them under the RFA, and may further refine its analytical approach for future rule makings.

EPA is also working to improve its estimation of small system revenues. The new CWSS, estimated for completion in early 2009, is expected to better enable EPA to assess the impacts

of future regulatory actions on small systems. In the new CWSS, we are taking steps to improve response rate, particularly with respect to water system revenue estimates. Examples of these steps include linking municipal government revenues to the system surveyed in that municipality, rather than reliance on the Census of Governments data; decreasing item non-response on revenue source through system site visits; and gaining a better understanding of how a water system pays for its system operations in systems that report no revenue, through an additional survey question. These improvements to the new CWSS will help EPA to gain a better understanding of the revenue sources available to small water systems and improve our ability to accurately understand the revenue streams available to these systems.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal

intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The total upfront costs of this action to States and public water systems are estimated at \$12.7 million, with estimated annual costs to States and public water systems ranging from \$5.9 to \$6.3 million. Systems and State/Primacy agencies incur one-time upfront costs associated with reviewing and implementing the overall LCR regulatory changes. For systems, activities include reviewing the rule changes and training staff. For States/Primacy agencies, activities include regulation adoption, program development, and miscellaneous training. Systems and States also incur annual costs consisting of the costs to implement the regulation. Annual costs to systems include the costs of reporting, monitoring, and public education. Annual costs to States consist of the costs of reviewing water system information. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule is consistent with, and only makes revisions to, the requirements under the current NPDWR for lead and copper. The existing rule imposes requirements on PWSs to ensure that water delivered to users is minimally corrosive; the rule requires removal of lead service lines and the provision of public education where necessary to ensure public health protection. This final rule does not make any significant changes to these requirements, but makes revisions and clarifications to the rule's requirements to enhance the efficiency and effectiveness of current rule requirements.

Nevertheless, in developing this rule, EPA consulted with State and local officials (including small entity representatives) early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. EPA held five workshops in 2004–2005 to elicit concerns and suggestions from stakeholders on various issues related to lead in drinking water. These workshops covered the topic areas of simultaneous compliance, sampling protocols, public education, lead service

line replacement, and lead in plumbing. Expert participants from utilities, academia, state governments, consumer and environmental groups, and other stakeholder groups participated in these workshops to identify issues, propose solutions, and offer suggestions for modifications and improvements to the LCR. These workshops are described in greater detail in the Economic Analysis for this final rule.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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 final rule does not have federalism implications. It will 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. The rule is consistent with, and only makes revisions to, the requirements under the current NPDWR for lead and copper. The existing rule imposes requirements on PWSs to ensure that water delivered to users is minimally corrosive; the rule requires removal of lead service lines and the provision of public education where necessary to ensure public health protection. This final rule does not make any significant changes to these requirements, but makes revisions and clarifications to the rule's requirements to enhance the efficiency and effectiveness of current rule requirements. Thus, Executive Order 13132 does not apply to this rule.

Nevertheless, EPA did consult with State and local officials in developing this final rule as described in Section V.D, Unfunded Mandates Reform Act. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), 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." This final rule does not have tribal implications, as specified in Executive Order 13175. It does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on those communities. The provisions of this final rule apply to all community and non-transient non-community water systems. Tribal governments may be owners or operators of such systems; however, nothing in this rule's provisions uniquely affects them. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action has a disproportionate effect on children. This final rule does not change the core LCR requirements in place to assure the protection of children from the effects of lead in drinking water; rather, these changes improve the implementation of these provisions. Moreover, EPA believes that this final rule is consistent with Executive Order 13045 because it further strengthens the protection to children from exposure to lead via drinking water as it enhances the

implementation of the LCR in the areas of monitoring, customer awareness, and lead service line replacement. This final rule also clarifies the intent of some provisions in the LCR. These changes are expected to ensure and enhance more effective protection of public health through the reduction in lead exposure.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule provides clarifications and modifications to the existing LCR requirements only.

This final rule does not affect the supply of energy as it does not regulate power generation. The public and private utilities that are affected by this final regulation do not, as a rule, generate power. The revisions to the LCR do not regulate any aspect of energy distribution as the utilities that are regulated by the LCR already have electrical service. Finally, these regulatory revisions do not adversely affect the use of energy as EPA does not anticipate that a significant number of drinking water utilities will add treatment technologies that use electrical power to comply with these regulatory revisions. As such, EPA does not anticipate that this rule will adversely affect the use of energy.

#### *I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The final rule may involve voluntary consensus standards in that it requires

additional monitoring for lead and copper in certain situations, and monitoring and sample analysis methodologies are often based on voluntary consensus standards. However, the final rule does not change any methodological requirements for monitoring or sample analysis, only, in some cases, the required frequency and number of samples. Also, EPA's approved monitoring and sampling protocols generally include voluntary consensus standards developed by agencies such as the American National Standards Institute (ANSI) and other such bodies wherever EPA deems these methodologies appropriate for compliance monitoring.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 10, 2007.

**VI. References**

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**List of Subjects in 40 CFR Parts 141 and 142**

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: September 25, 2007.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set forth in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

**PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS**

■ 1. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Section 141.80 is amended by removing and reserving paragraph (a)(2), by adding paragraph (c)(3)(v), and by revising paragraph (g) to read as follows:

**§ 141.80 General requirements.**

\* \* \* \* \*

(c) \* \* \*  
(3) \* \* \*

(v) For a public water system that has been allowed by the State to collect fewer than five samples in accordance with § 141.86(c), the sample result with the highest concentration is considered the 90th percentile value.

\* \* \* \* \*

(g) *Public education requirements.*

Pursuant to § 141.85, all water systems must provide a consumer notice of lead tap water monitoring results to persons served at the sites (taps) that are tested. Any system exceeding the lead action level shall implement the public education requirements.

\* \* \* \* \*

■ 3. Section 141.81 is amended as follows by:

- a. Removing the first sentence in paragraph (b)(3)(iii) and adding in its place the following two sentences;
- b. Revising the last sentence in paragraph (e)(1);
- c. Revising the first sentence in paragraph (e)(2) introductory text;
- d. Revising paragraph (e)(2)(i); and
- e. Revising paragraph (e)(2)(ii).

**§ 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.**

\* \* \* \* \*

(b) \* \* \*  
(3) \* \* \*

(iii) Any water system deemed to have optimized corrosion control pursuant to this paragraph shall notify the State in writing pursuant to § 141.90(a)(3) of any upcoming long-term change in treatment or addition of a new source as described in that section. The State must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system.

\* \* \*

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \* A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (§ 141.82(a)) within six months after the end of the monitoring period during which it exceeds one of the action levels.

(2) Step 2: Within 12 months after the end of the monitoring period during which a system exceeds the lead or copper action level, the State may

require the system to perform corrosion control studies (§ 141.82(b)). \* \* \*

(i) For medium-size systems, within 18 months after the end of the monitoring period during which such system exceeds the lead or copper action level.

(ii) For small systems, within 24 months after the end of the monitoring period during which such system exceeds the lead or copper action level.

\* \* \* \* \*

■ 4. Section 141.83(a)(1) is revised to read as follows:

**§ 141.83 Source water treatment requirements.**

\* \* \* \* \*

(a) \* \* \* (1) Step 1: A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (§ 141.88(b)) and make a treatment recommendation to the State (§ 141.83(b)(1)) no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded.

\* \* \* \* \*

■ 5. Section 141.84 is amended as follows by:

- a. Redesignating paragraph (b) as (b)(1);
- b. Revising the last sentence in the newly designated (b)(1) and adding two sentences to the end of the paragraph;
- c. Adding paragraph (b)(2); and
- d. In paragraph (f), revise “paragraph (b)” to read “paragraph (b)(2)”.

**§ 141.84 Lead service line replacement requirements.**

\* \* \* \* \*

(b)(1) \* \* \* The first year of lead service line replacement shall begin on the first day following the end of the monitoring period in which the action level was exceeded under paragraph (a) of this section. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs. If the State has established an alternate monitoring period, then the end of the monitoring period will be the last day of that period.

(2) Any water system resuming a lead service line replacement program after the cessation of its lead service line replacement program as allowed by paragraph (f) of this section shall update its inventory of lead service lines to include those sites that were previously determined not to require replacement through the sampling provision under paragraph (c) of this section. The system will then divide the updated number of remaining lead service lines by the

number of remaining years in the program to determine the number of lines that must be replaced per year (7 percent lead service line replacement is based on a 15-year replacement program, so, for example, systems resuming lead service line replacement after previously conducting two years of replacement would divide the updated inventory by 13). For those systems that have completed a 15-year lead service line replacement program, the State will determine a schedule for replacing or retesting lines that were previously tested out under the replacement program when the system re-exceeds the action level.

\* \* \* \* \*

■ 6. Section 141.85 is revised to read as follows:

**§ 141.85 Public education and supplemental monitoring requirements.**

All water systems must deliver a consumer notice of lead tap water monitoring results to persons served by the water system at sites that are tested, as specified in paragraph (d) of this section. A water system that exceeds the lead action level based on tap water samples collected in accordance with § 141.86 shall deliver the public education materials contained in paragraph (a) of this section in accordance with the requirements in paragraph (b) of this section. Water systems that exceed the lead action level must sample the tap water of any customer who requests it in accordance with paragraph (c) of this section.

(a) *Content of written public education materials.* (1) Community water systems and Non-transient non-community water systems. Water systems must include the following elements in printed materials (e.g., brochures and pamphlets) in the same order as listed below. In addition, language in paragraphs (a)(1)(i) through (ii) and (a)(1)(vi) of this section must be included in the materials, exactly as written, except for the text in brackets in these paragraphs for which the water system must include system-specific information. Any additional information presented by a water system must be consistent with the information below and be in plain language that can be understood by the general public. Water systems must submit all written public education materials to the State prior to delivery. The State may require the system to obtain approval of the content of written public materials prior to delivery.

(i) **IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER.** [INSERT NAME OF WATER SYSTEM] found elevated levels of lead

in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water.

(ii) Health effects of lead. Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother’s bones, which may affect brain development.

(iii) Sources of Lead.

(A) Explain what lead is.  
 (B) Explain possible sources of lead in drinking water and how lead enters drinking water. Include information on home/building plumbing materials and service lines that may contain lead.

(C) Discuss other important sources of lead exposure in addition to drinking water (e.g., paint).

(iv) Discuss the steps the consumer can take to reduce their exposure to lead in drinking water.

(A) Encourage running the water to flush out the lead.

(B) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(C) Explain that boiling water does not reduce lead levels.

(D) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(E) Suggest that parents have their child’s blood tested for lead.

(v) Explain why there are elevated levels of lead in the system’s drinking water (if known) and what the water system is doing to reduce the lead levels in homes/buildings in this area.

(vi) For more information, call us at [INSERT YOUR NUMBER] [(IF APPLICABLE)], or visit our Web site at [INSERT YOUR WEB SITE HERE]]. For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA’s Web site at <http://www.epa.gov/lead> or contact your health care provider.

(2) Community water systems. In addition to including the elements specified in paragraph (a)(1) of this section, community water systems must:

(i) Tell consumers how to get their water tested.

(ii) Discuss lead in plumbing components and the difference between low lead and lead free.

(b) *Delivery of public education materials.* (1) For public water systems serving a large proportion of non-English speaking consumers, as determined by the State, the public education materials must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the public education materials or to request assistance in the appropriate language.

(2) A community water system that exceeds the lead action level on the basis of tap water samples collected in accordance with § 141.86, and that is not already conducting public education tasks under this section, must conduct the public education tasks under this section within 60 days after the end of the monitoring period in which the exceedance occurred:

(i) Deliver printed materials meeting the content requirements of paragraph (a) of this section to all bill paying customers.

(ii)(A) Contact customers who are most at risk by delivering education materials that meet the content requirements of paragraph (a) of this section to local public health agencies even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users. The water system must contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations, which may include organizations outside the service area of the water system. If such lists are provided, systems must deliver education materials that meet the content requirements of paragraph (a) of this section to all organizations on the provided lists.

(B) Contact customers who are most at risk by delivering materials that meet the content requirements of paragraph (a) of this section to the following organizations listed in 1 through 6 that are located within the water system's service area, along with an

informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users:

(1) Public and private schools or school boards.

(2) Women, Infants and Children (WIC) and Head Start programs.

(3) Public and private hospitals and medical clinics.

(4) Pediatricians.

(5) Family planning clinics.

(6) Local welfare agencies.

(C) Make a good faith effort to locate the following organizations within the service area and deliver materials that meet the content requirements of paragraph (a) of this section to them, along with an informational notice that encourages distribution to all potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of these organizations from the local public health agencies, even if the agencies are not located within the water system's service area:

(1) Licensed childcare centers

(2) Public and private preschools.

(3) Obstetricians-Gynecologists and Midwives.

(iii) No less often than quarterly, provide information on or in each water bill as long as the system exceeds the action level for lead. The message on the water bill must include the following statement exactly as written except for the text in brackets for which the water system must include system-specific information: [INSERT NAME OF WATER SYSTEM] found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call [INSERT NAME OF WATER SYSTEM] [or visit (INSERT YOUR WEB SITE HERE)]. The message or delivery mechanism can be modified in consultation with the State; specifically, the State may allow a separate mailing of public education materials to customers if the water system cannot place the information on water bills.

(iv) Post material meeting the content requirements of paragraph (a) of this section on the water system's Web site if the system serves a population greater than 100,000.

(v) Submit a press release to newspaper, television and radio stations.

(vi) In addition to paragraphs (b)(2)(i) through (v) of this section, systems must implement at least three activities from one or more categories listed below. The educational content and selection of these activities must be determined in consultation with the State.

(A) Public Service Announcements.

(B) Paid advertisements.

(C) Public Area Information Displays.

(D) E-mails to customers.

(E) Public Meetings.

(F) Household Deliveries.

(G) Targeted Individual Customer Contact.

(H) Direct material distribution to all multi-family homes and institutions.

(I) Other methods approved by the State.

(vii) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the State has established an alternate monitoring period, the last day of that period.

(3) As long as a community water system exceeds the action level, it must repeat the activities pursuant to paragraph (b)(2) of this section as described in paragraphs (b)(3)(i) through (iv) of this section.

(i) A community water system shall repeat the tasks contained in paragraphs (b)(2)(i), (ii) and (vi) of this section every 12 months.

(ii) A community water system shall repeat tasks contained in paragraph (b)(2)(iii) of this section with each billing cycle.

(iii) A community water system serving a population greater than 100,000 shall post and retain material on a publicly accessible Web site pursuant to paragraph (b)(2)(iv) of this section.

(iv) The community water system shall repeat the task in paragraph (b)(2)(v) of this section twice every 12 months on a schedule agreed upon with the State. The State can allow activities in paragraph (b)(2) of this section to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the State in advance of the 60-day deadline.

(4) Within 60 days after the end of the monitoring period in which the exceedance occurred (unless it already is repeating public education tasks pursuant to paragraph (b)(5) of this section), a non-transient non-community water system shall deliver the public education materials specified by paragraph (a) of this section as follows:

(i) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(ii) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by

the non-transient non-community water system. The State may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(iii) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the State has established an alternate monitoring period, the last day of that period.

(5) A non-transient non-community water system shall repeat the tasks contained in paragraph (b)(4) of this section at least once during each calendar year in which the system exceeds the lead action level. The State can allow activities in (b)(4) of this section to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the State in advance of the 60-day deadline.

(6) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to § 141.86. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(7) A community water system may apply to the State, in writing (unless the State has waived the requirement for prior State approval), to use only the text specified in paragraph (a)(1) of this section in lieu of the text in paragraphs (a)(1) and (a)(2) of this section and to perform the tasks listed in paragraphs (b)(4) and (b)(5) of this section in lieu of the tasks in paragraphs (b)(2) and (b)(3) of this section if:

(i) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(ii) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(8) A community water system serving 3,300 or fewer people may limit certain aspects of their public education programs as follows:

(i) With respect to the requirements of paragraph (b)(2)(vi) of this section, a system serving 3,300 or fewer must implement at least one of the activities listed in that paragraph.

(ii) With respect to the requirements of paragraph (b)(2)(ii) of this section, a

system serving 3,300 or fewer people may limit the distribution of the public education materials required under that paragraph to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

(iii) With respect to the requirements of paragraph (b)(2)(v) of this section, the State may waive this requirement for systems serving 3,300 or fewer persons as long as system distributes notices to every household served by the system.

(c) *Supplemental monitoring and notification of results.* A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with § 141.86 shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

(d) *Notification of results.* (1) Reporting requirement. All water systems must provide a notice of the individual tap results from lead tap water monitoring carried out under the requirements of § 141.86 to the persons served by the water system at the specific sampling site from which the sample was taken (e.g., the occupants of the residence where the tap was tested).

(2) *Timing of notification.* A water system must provide the consumer notice as soon as practical, but no later than 30 days after the system learns of the tap monitoring results.

(3) *Content.* The consumer notice must include the results of lead tap water monitoring for the tap that was tested, an explanation of the health effects of lead, list steps consumers can take to reduce exposure to lead in drinking water and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from § 141.153(c).

(4) *Delivery.* The consumer notice must be provided to persons served at the tap that was tested, either by mail or by another method approved by the State. For example, upon approval by the State, a non-transient non-community water system could post the results on a bulletin board in the facility to allow users to review the information. The system must provide the notice to customers at sample taps tested, including consumers who do not receive water bills.

■ 7. Section 141.86 is amended as follows:

■ a. In paragraph (b)(5) remove the citation “§§ 141.85(c)(7)(i) and (ii)” and add in its place “§ 141.85(b)(7)”;

■ b. In paragraph (c) introductory text by adding three sentences after the third sentence;

■ c. In paragraph (d)(4)(i) add three sentences after the last sentence;

■ d. Revising paragraph (d)(4)(ii);

■ e. Revising paragraph (d)(4)(iii);

■ f. Revising paragraph (d)(4)(iv)(A);

■ g. Revising paragraph (d)(4)(vi)(B) introductory text;

■ h. Adding a sentence to the end of paragraph (d)(4)(vi)(B)(1);

■ i. Removing the first sentence in paragraph (d)(4)(vii), and adding in its place the following two sentences;

■ j. Adding a sentence to the end of paragraph (g)(4)(i); and

■ k. Removing the first sentence in paragraph (g)(4)(iii) and adding in its place two new sentences:

**§ 141.86 Monitoring requirements for lead and copper in tap water.**

\* \* \* \* \*

(c) \* \* \* A public water system that has fewer than five drinking water taps, that can be used for human consumption meeting the sample site criteria of paragraph (a) of this section to reach the required number of sample sites listed in paragraph (c) of this section, must collect at least one sample from each tap and then must collect additional samples from those taps on different days during the monitoring period to meet the required number of sites. Alternatively the State may allow these public water systems to collect a number of samples less than the number of sites specified in paragraph (c) of this section, provided that 100 percent of all taps that can be used for human consumption are sampled. The State must approve this reduction of the minimum number of samples in writing based on a request from the system or onsite verification by the State. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) \* \* \* A small or medium water

system collecting fewer than five samples as specified in paragraph (c) of this section, that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the frequency of sampling to once per year. In no case can the system reduce the number of samples required below the minimum of one sample per available tap. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

(ii) Any water system that meets the lead action level and maintains the range of values for the water quality control parameters reflecting optimal

corrosion control treatment specified by the State under § 141.82(f) during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring to once per year and reduce the number of lead and copper samples in accordance with paragraph (c) of this section if it receives written approval from the State. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. The State shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with § 141.90, and shall notify the system in writing when it determines the system is eligible to commence reduced monitoring pursuant to this paragraph. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iii) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that meets the lead action level and maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years if it receives written approval from the State. Samples collected once every three years shall be collected no later than every third calendar year. The State shall review monitoring, treatment, and other relevant information submitted by the water system in accordance with § 141.90, and shall notify the system in writing when it determines the system is eligible to reduce the frequency of monitoring to once every three years. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iv) \* \* \*

(A) The State, at its discretion, may approve a different period for conducting the lead and copper tap sampling for systems collecting a reduced number of samples. Such a period shall be no longer than four consecutive months and must represent

a time of normal operation where the highest levels of lead are most likely to occur. For a non-transient non-community water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the State shall designate a period that represents a time of normal operation for the system. This sampling shall begin during the period approved or designated by the State in the calendar year immediately following the end of the second consecutive six-month monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems initiating triennial monitoring.

\* \* \* \* \*

(vi) \* \* \*

(B) Any water system subject to the reduced monitoring frequency that fails to meet the lead action level during any four-month monitoring period or that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State under § 141.82(f) for more than nine days in any six-month period specified in § 141.87(d) shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (d)(3) of this section, collect the number of samples specified for standard monitoring under paragraph (c) of this section, and shall resume monitoring for water quality parameters within the distribution system in accordance with § 141.87(d). This standard tap water sampling shall begin no later than the six-month period beginning January 1 of the calendar year following the lead action level exceedance or water quality parameter excursion. Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions:

(1) \* \* \* This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

\* \* \* \* \*

(vii) Any water system subject to a reduced monitoring frequency under paragraph (d)(4) of this section shall notify the State in writing in accordance with § 141.90(a)(3) of any upcoming long-term change in treatment or addition of a new source as described in that section. The State must review and approve the addition of a new source or long-term change in water treatment

before it is implemented by the water system. \* \* \*

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(i) \* \* \* Samples collected every nine years shall be collected no later than every ninth calendar year.

\* \* \* \* \*

(iii) Any water system with a full or partial waiver shall notify the State in writing in accordance with § 141.90(a)(3) of any upcoming long-term change in treatment or addition of a new source, as described in that section. The State must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. \* \* \*

\* \* \* \* \*

■ 8. Section 141.87 is amended as follows by:

- a. Revising paragraph (d);
- b. Revising paragraph (e)(2)(i); and
- c. Adding a sentence to the end of paragraph (e)(2)(ii).

**§ 141.87 Monitoring requirements for water quality parameters.**

\* \* \* \* \*

(d) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under § 141.82(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section and determine compliance with the requirements of § 141.82(g) every six months with the first six-month period to begin on either January 1 or July 1, whichever comes first, after the State specifies the optimal values under § 141.82(f). Any small or medium-size system shall conduct such monitoring during each six-month period specified in this paragraph in which the system exceeds the lead or copper action level. For any such small and medium-size system that is subject to a reduced monitoring frequency pursuant to § 141.86(d)(4) at the time of the action level exceedance, the start of the applicable six-month monitoring period under this paragraph shall coincide with the start of the applicable monitoring period under § 141.86(d)(4). Compliance with State-designated optimal water quality parameter values shall be determined as specified under § 141.82(g).

(e) \* \* \*

(2)(i) Any water system that maintains the range of values for the water quality

parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in this paragraph (e)(1) of this section from every six months to annually. This sampling begins during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f), during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (e)(1) of this section from annually to every three years. This sampling begins no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

(ii) \* \* \* Monitoring conducted every three years shall be done no later than every third calendar year.

\* \* \* \* \*

- 9. Section 141.88 is amended as follows by:
  - a. Revising paragraph (b);
  - b. Adding a sentence to the end of paragraph (d)(1)(i);
  - c. Revising paragraph (d)(1)(ii);
  - d. Revising paragraph (e)(1) introductory text; and
  - e. Revising paragraph (e)(2) introductory text.

**§ 141.88 Monitoring requirements for lead and copper in source water.**

\* \* \* \* \*

(b) *Monitoring frequency after system exceeds tap water action level.* Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system no later than six months after the end of the monitoring period during which the lead or copper action level was exceeded. For monitoring periods that are annual or less frequent, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the State has established an alternate monitoring period, the last day of that period.

\* \* \* \* \*

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

(i) \* \* \* Triennial samples shall be collected every third calendar year.

(ii) A water system using surface water (or a combination of surface and ground water) shall collect samples once during each calendar year, the first annual monitoring period to begin during the year in which the applicable State determination is made under paragraph (d)(1) of this section.

\* \* \* \* \*

(e) \* \* \*

(1) A water system using only ground water may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle (as that term is defined in § 141.2) provided that the samples are collected no later than every ninth calendar year and if the system meets one of the following criteria:

\* \* \* \* \*

(2) A water system using surface water (or a combination of surface water and ground water) may reduce the monitoring frequency in paragraph (d)(1) of this section to once during each nine-year compliance cycle (as that term is defined in § 141.2) provided that the samples are collected no later than every ninth calendar year and if the system meets one of the following criteria:

\* \* \* \* \*

**§ 141.89 [Amended]**

- 10. Section 141.89 is amended as follows by:
  - a. In paragraph (a)(1)(iii) remove the citation “§ 141.88(a)(1)(iii)” and add in its place “§ 141.88(a)(1)(iv)”;
  - b. In paragraph (a)(1)(iv) remove the citation “(a)(2)” and add in its place “(a)(1)”.
- 11. Section 141.90 is amended as follows by:
  - a. Removing the colon and adding a period in its place at the end of paragraph (a)(1) introductory text;
  - b. Adding a sentence to the end of paragraph (a)(1) introductory text;
  - c. In paragraph (a)(2) introductory text remove the citation “§§ 141.85(c)(7)(i) and (ii)” and add in its place “§ 141.85(b)(7)”;
  - d. Revising paragraph (a)(3);
  - e. Revising paragraph (e)(1);
  - f. Revising paragraph (e)(2) introductory text;
  - g. Revising the last sentence of paragraph (e)(2)(ii);
  - h. Revising paragraph (f)(1) introductory text;
  - i. Revising paragraph (f)(1)(i); and
  - j. Adding paragraph (f)(3).

**§ 141.90 Reporting requirements.**

\* \* \* \* \*

(a) \* \* \* (1) \* \* \* For monitoring periods with a duration less than six

months, the end of the monitoring period is the last date samples can be collected during that period as specified in §§ 141.86 and 141.87.

\* \* \* \* \*

(3) At a time specified by the State, or if no specific time is designated by the State, then as early as possible prior to the addition of a new source or any long-term change in water treatment, a water system deemed to have optimized corrosion control under § 141.81(b)(3), a water system subject to reduced monitoring pursuant to § 141.86(d)(4), or a water system subject to a monitoring waiver pursuant to § 141.86(g), shall submit written documentation to the State describing the change or addition. The State must review and approve the addition of a new source or long-term change in treatment before it is implemented by the water system. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants (e.g., alum to ferric chloride), and switching corrosion inhibitor products (e.g., orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

\* \* \* \* \*

(e) \* \* \*

(1) No later than 12 months after the end of a monitoring period in which a system exceeds the lead action level in sampling referred to in § 141.84(a), the system must submit written documentation to the State of the material evaluation conducted as required in § 141.86(a), identify the initial number of lead service lines in its distribution system at the time the system exceeds the lead action level, and provide the system’s schedule for annually replacing at least 7 percent of the initial number of lead service lines in its distribution system.

(2) No later than 12 months after the end of a monitoring period in which a system exceeds the lead action level in sampling referred to in § 141.84(a), and every 12 months thereafter, the system shall demonstrate to the State in writing that the system has either:

\* \* \* \* \*

(ii) \* \* \* In such cases, the total number of lines replaced and/or which meet the criteria in § 141.84(c) shall

equal at least 7 percent of the initial number of lead lines identified under paragraph (e)(1) of this section (or the percentage specified by the State under § 141.84(e)).

\* \* \* \* \*

(f) \* \* \* (1) Any water system that is subject to the public education requirements in § 141.85 shall, within ten days after the end of each period in which the system is required to perform public education in accordance with § 141.85(b), send written documentation to the State that contains:

(i) A demonstration that the system has delivered the public education materials that meet the content requirements in § 141.85(a) and the delivery requirements in § 141.85(b); and

\* \* \* \* \*

(3) No later than 3 months following the end of the monitoring period, each system must mail a sample copy of the consumer notification of tap results to the State along with a certification that the notification has been distributed in a manner consistent with the requirements of § 141.85(d).

\* \* \* \* \*

■ 12. Section 141.154 is amended by revising paragraph (d) to read as follows:

**§ 141.154 Required additional health information.**

\* \* \* \* \*

(d) Every report must include the following lead-specific information:

(1) A short informational statement about lead in drinking water and its effects on children. The statement must include the following information:

If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. [NAME OF UTILITY] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at <http://www.epa.gov/safewater/lead>.

(2) A system may write its own educational statement, but only in consultation with the State.

\* \* \* \* \*

**PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION**

■ 13. The authority citation for part 142 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

■ 14. Section 142.14 is amended by revising paragraph (d)(8)(xi) to read as follows:

**§ 142.14 Records kept by States.**

\* \* \* \* \*

(d) \* \* \*

(8) \* \* \*

(xi) Section 141.86(b)(5)—system-specific determinations regarding use of non-first-draw samples at non-transient non-community water systems, and community water systems meeting the criteria of § 141.85(b)(7)(i) and (ii) of this chapter, that operate 24 hours a day;

\* \* \* \* \*

[FR Doc. E7-19432 Filed 10-9-07; 8:45 am]

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# Federal Register

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**Wednesday,  
October 10, 2007**

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**Part V**

## **Department of the Interior**

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**Office of Surface Mining Reclamation and  
Enforcement**

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**30 CFR Part 926  
Montana Regulatory Program; Final Rule**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 926**

[MT-025-FOR]

**Montana Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment with certain exceptions and an additional requirement.

**SUMMARY:** We are approving, with certain exceptions and an additional requirement, an amendment to the Montana regulatory program (the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions to, additions of, and deletions of its program rules (ARM 17.24.301-1309). The amendment included changes to: Definitions; permit application requirements; application processing and public participation; application review, findings, and issuance; permit conditions; permit renewal; performance standards; prospecting permits and notices of intent; bonding and insurance; protection of parks and historic sites; lands where mining is prohibited; inspection and enforcement; civil penalties; small operator assistance program (SOAP); restrictions on employee financial interests; blasters license; and revision of permits. Montana revised its program to be consistent with the corresponding Federal regulations and to implement previous statutory changes already approved by OSM.

**DATES:** *Effective Date:* October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey W. Fleischman, Telephone: 307.261.6550, E-mail address: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Montana Program
- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

**I. Background on the Montana Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of

surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

Rules for the Montana program are contained in ARM, Title 17 Chapter 24 entitled "Reclamation." The enabling statutes for the Montana program are contained largely under Title 82 entitled "Minerals, Oil, and Gas," and Chapter 4 entitled "Reclamation." Permitting, performance standards, enforcement, and most program requirements are found in Part 2 of 82-4, Montana Code Annotated (MCA), entitled "Coal and Uranium Mine Reclamation," and the provisions for penalties, fees, and interest are found in Part 10. The procedures for initiating and holding contested case administrative hearings are found at 82-4-206, MCA, and Title 2, Chapter 4, Part 6 of the Montana Administrative Procedure Act, and the provisions providing for judicial review of contested case decisions are set forth in Part 7.

**II. Submission of the Proposed Amendment**

By letter dated August 29, 2005, Montana sent us an amendment to revise its regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT-22-1). The proposed revisions are largely in response to changes to the Montana Strip and Underground Mine Reclamation Act that were the result of House Bill (HB) 373, which was enacted in 2003. OSM approved, with several exceptions, the changes to the statute in the February 16, 2005, **Federal Register** (70 FR 8001). Montana's proposed amendment is also in response to the required program amendments at 30 CFR 926.16(e)(1), (k), (l), and (m), and includes changes made at its own initiative, and provides clarification and specificity.

We announced receipt of the proposed amendment in the November 29, 2005, **Federal Register** (70 FR 71428). In the same document, we opened the public comment period and

provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 29, 2005. Three parties requested an extension of the comment period. We reopened and extended the public comment period in the February 13, 2006, **Federal Register** (71 FR 7475); the extended comment period ended on February 28, 2006. We received comments from one citizen's group and two individuals.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with certain exceptions and an additional requirement as described below.

**A. Explanation of Findings**

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR part 700. In 30 CFR 730.5, OSM defines "consistent with" and "in accordance with" to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

**Montana Rules Previously Disapproved by OSM**

Included in HB 373 (at Section 15: "contingent voidness") was a provision that if any other provision of HB 373 were to be disapproved by OSM, then that disapproved portion would be automatically void. For that reason, in its decision on the statute OSM did not require Montana to delete the provisions that were disapproved. A review of current postings of Montana's statutes shows that the disapproved provisions have been removed. Montana has no authority to propose a regulation under statutory provisions that were voided and removed from the statute because they were disapproved by OSM. However, this proposed amendment contains regulations to implement the previously-disapproved statutory provisions, apparently because the proposed regulations were developed

prior to OSM's decision on the statute, Montana recognizes this problem in its submission and states that the regulations will be removed in the State's next rulemaking.

Nevertheless, OSM must formally disapprove these provisions in this decision. On this basis, OSM is disapproving the phrase "and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area" in proposed subparagraph (c) of the definition of "Approximate original contour" at 17.24.301(13). OSM is also disapproving the final phrase "as they relate to uses of land and water within the area affected by mining and the adjacent area" in the definition of "Hydrologic balance" at proposed 17.24.301(54). Because Montana has committed to removing these provisions in its next rulemaking and because the offending provisions have no statutory basis, OSM is not establishing any required program amendments for them.

*B. Minor Wording, Editorial, Punctuation, Grammatical and Recodification Changes to Previously Approved Regulations*

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules. In addition to the renumbering and reformatting, Montana also proposed in many instances to revise the statutory and implementing authority references after each section. No substantive changes to the text of these regulations were proposed. Further, Montana proposed numerous revisions to its regulatory program to simplify references to applicable rules, reduce unnecessary, redundant, and duplicative language, reorganize and/or relocate already existing language to a more appropriate place within the regulations, and to provide clarification and specificity to provisions that were previously approved by OSM. Because the proposed revisions to these previously-approved rules are minor in nature and do not change any fundamental requirements or weaken Montana's authority to enforce them, we are approving the changes and find that they are no less effective than the Federal regulations at Title 30 (Mineral Resources), Chapter VII (Office of Surface Mining Reclamation and Enforcement, Department of the Interior), parts 700 through 887.

ARM 17.24.301(37) through (141)(b) recodified; definitions.

ARM 17.24.301(53)(a) and (b); definition of "Historically used for cropland."

ARM 17.24.301(68); definition of "Materially damage the quantity and quality of water."

ARM 17.24.301(107)(d); definition of "Ramp road."

ARM 17.24.303 recodified; Legal, Financial, Compliance, and Related Information.

ARM 17.24.304(1)(f)(i)(C) and (ii)(A), and (i)-(l); recodified; Baseline Information: Environmental Resources.

ARM 17.24.305(1)(j) and (2)(a); Maps.

ARM 17.24.306; Baseline Information: Prime Farmland Investigation.

ARM 17.24.308(1)(b)(vi); recodified; Operations Plan.

ARM 17.24.312(1)(a), (d)(ii) and (2); Fish and Wildlife Plan.

ARM 17.24.313(1)(g)(i) and (ii); recodification; Reclamation Plan.

ARM 17.24.315; Plan for Ponds and Embankments; change "registered" to "licensed professional engineer" in (1)(a)(i), (b)(i), and (d)(i).

ARM 17.24.321(1)(a), (b) and (d); Transportation Facilities Plan.

ARM 17.24.322(2)(a), (viii) and (ix); Geologic Information and Coal Conservation Plan.

ARM 17.24.405(5)(a) and (b), (7)(a)(i), and (8)(a)(i); Findings and Notice of Decision.

ARM 17.24.412(2) and (3); Extension of Time to Commence Mining.

ARM 17.24.413(1)(d); recodified; Conditions of Permit.

ARM 17.24.501(7); General Backfilling and Grading Requirements.

ARM 17.24.520(3)(k) and (m); Thick Overburden and Disposal of Excess Spoil; change "registered" to "licensed professional engineer" in (3)(c), (i), (j)(ii) and (iv)(A).

ARM 17.24.523(2); Coal Fires and Coal Conservation.

ARM 17.24.601(8); General Requirements for Road and Railroad Loop construction; change "registered" to "licensed professional engineer."

ARM 17.24.602(1); Location of Roads and Railroad Loops.

ARM 17.24.605(3)(a)-(f) recodified; Hydrologic Impact of Roads and Railroad Loops.

ARM 17.24.623(1), (5)(f), (6) and (7); recodification; Blasting Schedule.

ARM 17.24.626(1); recodified; Records of Blasting Operations.

ARM 17.24.634(1)(b), (e), (g), (h), (i), (2) and (3); recodification; Reclamation of Drainage Basins; change "registered" to "licensed professional engineer" in (2).

ARM 17.24.635(6) and (7); General Requirements for Temporary and Permanent Diversion of Overland Flow,

Through Flow, Shallow Ground Water Flow, Ephemeral Drainageways, and Intermittent and Perennial Streams; change "registered" to "licensed professional engineer" in (5).

ARM 17.24.636 recodified; Special Requirements for Temporary Diversions. ARM 17.24.638(2)(a); Sediment Control Measures.

ARM 17.24.639(1)(c)(ii), (d) and (e), (10), (11), (20)(a),(22), (23), (25), and (28)(a); Sedimentation Ponds and Other Treatment Facilities; change "registered" to "licensed professional engineer" in (17) and 28(b); and recodification of (24)(b)-(27).

ARM 17.24.645(1), (3) and (6); Ground Water Monitoring.

ARM 17.24.646(1) and (6); Surface Water Monitoring.

ARM 17.24.702(4)(a); Redistribution and Stockpiling of Soil.

ARM 17.24.703(1)(a); Substitution of Other Materials for Soil.

ARM 17.24.711(2) and (3); Establishment of Vegetation.

ARM 17.24.723(1), (2), (3) and (5); Monitoring.

ARM 17.24.724 recodification; Revegetation Success Criteria.

ARM 17.24.725(1); Period of Responsibility.

ARM 17.24.726(3) and (4); recodified; Vegetation Measurements.

ARM 17.24.730; Season of Use.

ARM 17.24.732; Vegetation Requirements for Previously Cropped Areas.

ARM 17.24.733; Measurement Standards for Trees, Shrubs, and Half-Shrubs.

ARM 17.24.751(2)(g), (h), (i), and (j); Protection and Enhancement of Fish, Wildlife, and Related Environmental Values.

ARM 17.24.761(1)-(4); Air Resources Protection.

ARM 17.24.815(2)(e)(i)(C); Prime Farmland Revegetation.

ARM 17.24.824(2) and (4); Alternate Reclamation: Alternate Postmining Land Uses.

ARM 17.24.825(1)(b)-(2); Alternate Reclamation: Alternate Revegetation.

ARM 17.24.832(5)(a); Auger Mining; Specific Performance Standards.

ARM 17.24.901(1)(c)(i)(G); General Application and Review Requirements.

ARM 17.24.924(9); Disposal of Underground Development Waste: General Requirements; change

"registered" to "licensed professional engineer in (4)(a), (18)(a) and (d)."

ARM 17.24.927; Disposal of Underground Development Waste: Durable Rock Fills; change "registered" to "licensed professional engineer" in (1) and (2).

ARM 17.24.930; Placement and Disposal of Coal Processing Waste:

Special Application Requirements; change “registered” to “licensed professional engineer” in (2)(a)(i).

ARM 17.24.932; Disposal of Coal Processing Waste; change “registered” to “licensed professional engineer” in (5)(a).

ARM 17.24.1001(1)(a), (b) and (2)(c); Permit Requirement; recodification of (d)–(m), (n) and (o).

ARM 17.24.1002(2)(a)(j); Information and Monthly Reports.

ARM 17.24.1003; Renewal and Transfer of Permits.

ARM 17.24.1017(1)(b)(i); Bond Release Procedures for Drilling Operations.

ARM 17.24.1018(1)(a), (b), (5)(a), (6)(a), and (9); Notice of Intent to Prospect.

ARM 17.24.1104(2); Bonding; Adjustment of Amount of Bond.

ARM 17.24.1106(1)(a) and (b); recodified; Bonding: Terms and Conditions of Bond.

ARM 17.24.1109 (1) and (5); recodified; Bonding: Letters of Credit.

ARM 17.24.1116(6)(b)(ii), (c)(iv), (d)(i), (vi) and (7); Bonding: Criteria and Schedule for Release of Bond.

ARM 17.24.1129(2)(e) and (3); Annual Report.

ARM 17.24.1131(1); recodified; Protection of Parks, Historic Sites, and Other Lands.

ARM 17.24.1206(1), (4), (5)(a) and (d); Notices, Orders of Abatement and Cessation Orders: Issuance and Service.

ARM 17.24.1211(2); Procedure for Assessment and Waiver of Civil Penalties.

ARM 17.24.1212(1)(a)–(d), (2) and (4); Point System for Civil Penalties and Waivers.

ARM 17.24.1219(2)(a) and (4); Individual Civil Penalties: Procedure for Assessment.

ARM 17.24.1225(2)(a)(i), (b), (d), (f)–(j) and (3); Small Operator Assistance Program: Data Requirements.

ARM 17.24.1226(2)(a)(vi) and (vii); Small Operator Assistance Program: Qualification of Laboratories, Consultants, and Contractors.

ARM 17.24.1250(1); Restrictions on Employee Financial Interests: Contents of Statement.

ARM 17.24.1255(1); Restrictions on Employee Financial Interests: Multiple Interest Advisory Boards.

ARM 17.24.1263(1)(a) and (3); Suspension or Revocation of Blaster Certification.

*C. Revisions to Montana’s Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

Montana proposed revisions to the following rules containing language that

is the same as or similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore we are approving them.

ARM 17.24.301(26); definition of “Community or institutional building” [30 CFR 816.61(d)(1)(i), 816.67(b)(1)(i) and 816.68(d)].

ARM 17.24.301(36); definition of “Dwelling” [30 CFR 816.61(d)(1)(i), 816.67(b)(1)(i) and 816.68(d)].

ARM 17.24.301(59); definition of “Incidental boundary revision” [30 CFR 774.13(d) and SMCRA Section 511(3)].

ARM 17.24.301(107)(b); definition of “Haul road” [30 CFR 701.5 and 816/817.150(a)(2)(ii)].

ARM 17.24.302; Format, Data Collection, and Supplemental Information [30 CFR 777.11(a) and 777.13].

ARM 17.24.303(1)(w), (x), and (y); Legal, Financial, Compliance, and Related Information [30 CFR 778.21 and 777.14(b)].

ARM 17.24.305(2)(b)(i); Maps [30 CFR 779.25(b), 780.14(c) and 783.25(b)].

ARM 17.24.313(1)(b), (d)(ii) and (iv), (g), and (h); Reclamation Plan [30 CFR 780.18(b)(1), (3), (4) and (5)].

ARM 17.24.321(1) and (3); Transportation Facilities Plan [30 CFR 780.37(a)(5) and 784.24(a)(5)].

ARM 17.24.322(2)(a)(x) and (4); Geologic Information and Coal Conservation Plan [30 CFR 780.18(b)(6) and 816.59].

ARM 17.24.416(1)(b); Permit Renewal [30 CFR 774.15(b)(2)(iv)].

ARM 17.24.427(1)(a), (c) and (2); Change of Contractor [30 CFR 774.17(a), (b), and (d)].

ARM 17.24.501(4)(d); General Backfilling and Grading Requirements [30 CFR 816.102(a)(2)].

ARM 17.24.501(6)(d); General Backfilling and Grading Requirements [30 CFR 816.102(a)].

ARM 17.24.603(4); Road and Railroad Loop Embankments [30 CFR 816.151(b)].

ARM 17.24.605(8); Hydrologic Impact of Roads and Railroad Loops [30 CFR 816.151(d)(6)].

ARM 17.24.609(1); Other Support Facilities [30 CFR 816.181(b)].

ARM 17.24.623(2); Blasting Schedule [30 CFR 816.64(b)(2)].

ARM 17.24.623(5)(b); Blasting Schedule [30 CFR 816.64(c)(2)].

ARM 17.24.624(4); Surface Blasting Requirements [30 CFR 816.66(b)].

ARM 17.24.626(1)(j); Records of Blasting Operations [30 CFR 816.68(j)].

ARM 17.24.636(2) and (3); Special Requirements for Temporary Diversions [30 CFR 816.43(a)(2)(i) and (iii)].

ARM 17.24.639(2), (3) and (7); Sedimentation Ponds and Other

Treatment Facilities; [30 CFR 816.46(c)(1) and (2)].

ARM 17.24.642(1)–(7); Permanent Impoundments and Flood Control Impoundments [30 CFR 816.49(a)(9) and (b)].

ARM 17.24.646(4); Surface Water Monitoring [30 CFR 816.42].

ARM 17.24.701(4); Removal of Soil [30 CFR 816.22(a)(3)].

ARM 17.24.702(4)(b) and (6); Redistribution and Stockpiling of Soil; [30 CFR 816.22(d)(1)(i) and (2)].

ARM 17.24.714(1); Soil Stabilizing Practices [30 CFR 816.114].

ARM 17.24.716(1), (3), (4), and (5); Method of Revegetation; [30 CFR 816.111(a) and (b) and 780.18(b)(5)].

ARM 17.24.717(1); Planting of Trees and Shrubs [30 CFR 816.111(b) and 816.116(a) and (b)(3)(ii) and (iii)].

ARM 17.24.718(3); Soil Amendments, Management Techniques, and Land Use Practices [30 CFR 816.116(c)(4)].

ARM 17.24.724(1)–(3); Revegetation Success Criteria [30 CFR 816.116(a)(1) and (b)].

ARM 17.24.726(2) and (3); Vegetation Measurements [30 CFR 816.116(a)(2) and 816.116(c)(3)(i)].

ARM 17.24.751(1) and (2)(a), (c) and (f); Protection and Enhancement of Fish, Wildlife, and Related Environmental Values [30 CFR 816.97(b), (c), (e)(1) and (3), (f) and the MOU between OSM and the USFWS].

ARM 17.24.762(1)(a)–(d); Postmining Land Use [30 CFR 816/817.133(b) and 780.23(a)(1)].

ARM 17.24.832(4) and (5)(b) and (c); Auger Mining: Specific Performance Standards [30 CFR 819.19(a) and 819.15(b)(2)].

ARM 17.24.1001; Permit Requirement; (2)(d) [30 CFR 772.12(b)(14)].

ARM 17.24.1104(1) and (3); Bonding; Adjustment of Amount of Bond [30 CFR 800.15].

ARM 17.24.1108(1), (2) and (4); Bonding: Certificates of Deposit [30 CFR 800.21(a)].

ARM 17.24.1125(2); Liability Insurance [30 CFR 800.60(b)].

ARM 17.24.1132(1)(a); Definition of “valid existing rights;” [incorporates by reference the Federal definition at 30 CFR 761.5].

ARM 17.24.1133; Areas Upon Which Coal Mining is Prohibited: Procedures for Determination; (2)(a), (b) [30 CFR 761.11 and 761.12] and (3) [incorporates by reference the Federal requirements and criteria for submission and processing of requests for valid existing rights determinations at 30 CFR 761.16].

ARM 17.24.1201(1)–(4); Frequency and Methods of Inspections [30 CFR 840.11(a), (b), (d)(1), and (e)(1) and (2)].

ARM 17.24.1202(1); Consequences of Inspection and Compliance Reviews [30 CFR 840.11(e)(3)].

ARM 17.24.1301; Modification of Existing Permits: Issuance of Revisions and Permits [774.10(a)(1) and (b)].

*D. Revisions Adopting or Deleting Language Consistent With the Revisions to the Montana Statute Approved by OSM*

Montana proposes several revisions to its rules that are consistent with and reflect enactment of the provisions in HB 373 that were approved in our decision published in the February 16, 2005, **Federal Register** (70 FR 8001). We are approving these previously-approved changes. Montana also proposes to eliminate language and citations that are no longer necessary due to the approval of those statutory changes in the February 16, 2005, **Federal Register**. We are also approving these ancillary changes.

ARM 17.24.301(6); definition of "Adjacent area."

ARM 17.24.301(11); definition of "Alternative postmining land use."

ARM 17.24.301(13); the introductory text, subparagraphs (a), (b), and (d) of the definition of "Approximate original contour."

ARM 17.24.301(38); definition of "Ephemeral drainageway."

ARM 17.24.301(50); definition of "Higher or better uses."

ARM 17.24.301(54); definition of "Hydrologic balance."

ARM 17.24.301(64); definition of "Land use."

ARM 17.24.301(64)(b); deleting the definition of "Special use pasture" and substituting with the definition of "Pastureland."

ARM 17.24.301(64)(c); definition of "Grazing land."

ARM 17.24.301(64)(d); deleting the definition of "Commercial forest land and substituting with the definition of "Forestry."

ARM 17.24.301(64)(g); definition of "Recreation."

ARM 17.24.301(64)(h); definition of "Fish and wildlife habitat."

ARM 17.24.301(67); definition of "Material damage."

ARM 17.24.301(90); definition of "Prime Farmland."

ARM 17.24.301(103); definition of "Reference area."

ARM 17.24.301(143); definition of "Wildlife habitat enhancement feature."

ARM 17.24.312(1)(b); Fish and Wildlife Plan.

ARM 17.24.313(1)(a); Reclamation Plan.

ARM 17.24.324(1)(e); Prime Farmlands: Special Application

Requirements; deletion of cross-references resulting from statutory changes.

ARM 17.24.401(3)(f) and (5)(a)(iv); Filing of Application and Notice.

ARM 17.24.405(1) and (2), (6)(j), and deletion of (7); Findings and Notice of Decision.

ARM 17.24.501(4)(a); General Backfilling and Grading Requirements.

ARM 17.24.634(c); Reclamation of Drainage Basins.

ARM 17.24.711(1)(a)(2) and (3), and (1)(b); Establishment of Vegetation.

ARM 17.24.726; Vegetation Measurements; deletion of (3), (5) and (7).

ARM 17.24.728; Composition of Vegetation.

ARM 17.24.751(2)(e); Protection and Enhancement of Fish, Wildlife, and Related Environmental Values.

ARM 17.24.762(1), (2), and (3); Postmining Land Use.

ARM 17.24.764; Cropland Reclamation.

ARM 17.24.815(1)(a)(i), (ii) and (b); Prime Farmland Revegetation.

ARM 17.24.821; Alternative Postmining Land Uses: Submission of Plan.

ARM 17.24.823(1)(a); Alternative Postmining Land Uses: Approval of Plan.

ARM 17.24.824(1), (3), and (5); Alternate Reclamation: Alternate Postmining Land Uses.

ARM 17.24.1116(6), (c)(v) and (d)(vi); Bonding: Criteria and Schedule for Release of Bond.

*E. Revisions to Montana's Rules With No Corresponding Federal Statute or Regulation*

Montana proposed several revisions to its regulatory program for which there is no Federal counterpart provision.

1. ARM 17.24.301(46); Definition of "Good Ecological Integrity." Montana proposes to add a new definition for "Good ecological integrity" as follows:

"Good ecological integrity" means that the complex of community of organisms and its environment functioning as an ecological unit possesses components and processes in good working order. Pastureland and cropland managed in accordance with county or local conservation district or state or federal best management practices (resource management strategies, such as normal husbandry practices, used to manage or protect a resource and promote ecological and economic sustainability) generally reflect good ecological integrity with regard to such land uses.

Montana maintains that this definition is needed to adequately and appropriately describe the desired condition for reference and reclaimed

areas. Specifically, Montana states that following an extensive literature review, it was determined that this term is regularly accepted, used and recommended by a variety of professional ecologists. Montana further notes that the term emphasizes the combination of ecological, social and economic factors at different temporal and spatial scales, and that the desired result is the maintenance of a diversity of life forms, ecological processes and human cultures. Montana goes on to explain that "Good" is a commonly and conventionally accepted minimum standard insisted on by competent land managers and by land management agencies as a condition and/or goal necessary to sustain the utility and economic value of vegetation, land uses and ecosystems. Lastly, Montana states that the term "ecological integrity" is consistent with vegetation, land and resource valuation systems being commonly used by federal and state land management agencies, academia, consultants and private land managers. The rationale Montana provided for justifying the addition of this definition is reasonable, and the lack of a Federal counterpart definition does not render this proposed rule less effective than the Federal regulations. Therefore, we approve it.

2. ARM 17.24.323; Grazing Plan. Montana proposes to delete this rule and explains that grazing is discretionary management to be used by a mine operator to achieve the approved revegetation and postmining land use results, and that the State Board has determined that implementation and management of grazing within a mine permit area should be the responsibility of the operator. If the operator fails to appropriately use grazing, the desired/approved revegetative/land use results will probably not be obtained and phase III bond release will not be realized. Lastly, Montana notes that it has the power to require appropriate practices or to pursue enforcement actions if the operator violates any rules regarding revegetation or land use.

The Federal grazing rules, previously located at 30 CFR 816.115, required livestock grazing for the last two years of the responsibility period when the approved postmining land use is range or pasture land. This requirement was intended to assure that the vegetation would support about the same number of livestock that would be supported had the area not been mined. OSM suspended previous 30 CFR 816.115 on August 4, 1980 (45 FR 51549), in response to a U.S. District Court ruling that section 515(b)(19) of the Act does not require lands with a postmining use

of pasture or grazing to be actually subjected to grazing activities. *In re: Permanent Surface Mining Regulation Litigation*, 617 F.2d 807 (1980). On September 2, 1983 (48 FR 40140) OSM removed the previously suspended regulation at 30 CFR 816.115, thereby eliminating any reference to required grazing from the Federal regulations.

For these reasons, Montana's deletion of the grazing plan rule and its rationale for doing so is acceptable and does not render Montana's rules less effective than SMCRA and the Federal regulations. Therefore, we are approving the deletion. For these same reasons, we are approving Montana's proposed deletion of its requirements for livestock grazing at ARM 17.24.719.

3. ARM 17.24.413; Conditions of Permit. Montana proposes to add an additional condition to all permits at subparagraph (1)(f), to read as follows:

A permittee shall immediately notify the department whenever a creditor of the permittee has attached or obtained a judgment against the permittee's equipment or materials in the permit area or on the collateral pledged to the department.

The Federal regulations at 30 CFR 800.16(e) require that performance bonds provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violation which would result in the suspension or revocation of the surety or the bank charter or license to do business. Montana's proposed rule provides guidance beyond that contained in the Federal regulations to the extent that it requires the permittee to personally and immediately notify the Department of Environmental Quality (Department) of its financial inability to perform reclamation operations and supply it with relevant information to that effect. Accordingly, the proposed rule is no less effective than the Federal regulations and we approve it.

4. ARM 17.24.522; Permanent Cessation of Operations. Montana proposes to delete the first two sentences of paragraph (3), which provides for completion of backfilling and grading within 90 days after the Department determines the operation is completed, and that final pit reclamation must be as close to the coal loading operation as technical factors allow. Montana's explanatory note states that the proposed deletion is necessary because the provision conflicts with ARM 17.24.501(6)(b), which requires backfilling and grading

to be completed within two years after coal removal, and the 90-day requirement is unrealistic for large coal mining operations. We agree. The Federal time and distance requirements for backfilling and grading at 30 CFR 816.101 were suspended indefinitely on August 31, 1992 (57 FR 33875, July 31, 1992). Moreover, the permanent cessation of operations regulations at 30 CFR 816.132(a) requires persons who permanently cease surface mining operations to close or backfill or otherwise permanently reclaim all affected areas in accordance with the permit approved by the regulatory authority. In other words, the regulatory authority has discretion in determining time and distance requirements for backfilling and grading operations. The provision which Montana proposed for deletion falls within the State's discretion to specify, according to the Federal regulations. There is no exact Federal equivalent. Therefore, we find the proposed revision is not inconsistent with the applicable Federal provisions and we approve it.

5. ARM 17.24.633; Water Quality Performance Standards. Montana proposes to revise paragraph (2) of this rule to require a demonstration that drainage basins have been stabilized consistent with the approved postmining land use. Montana explains that the rule change modifies the evaluation of drainage basin stability to reflect enactment of HB 373 by the 2003 Legislature. Under HB 373, there is a greater opportunity for having a postmining land use that is different from the premining land use and, thus, drainage basin stability must be evaluated in that context. We agree. In the February 16, 2005, **Federal Register** (70 FR 8001, 8004), we approved subparagraph (c) of Montana's statutory definition of "Approximate Original Contour" at 82-4-203(4) which stated that "postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected." In approving this language, we noted that it provides guidance beyond that contained in the Federal definition of approximate original contour. This same rationale applies here. Further, as we note in Finding III.F.8., OSM has previously granted regulatory authorities the flexibility to develop stabilization measures consistent with local terrain, climate, soils, and other

conditions existing within the State with respect to exposed surface areas, including drainage basins (48 FR 1160, January 10, 1983). For these reasons, we find that Montana's proposed rule change is no less stringent than SMCRA and we are approving it.

6. ARM 17.24.711; Establishment of Vegetation. Montana proposes to revise its rules by adding new subparagraph (1)(a) that implements statutory language previously approved by OSM in our decision published in the February 16, 2005, **Federal Register** (70 FR 8001, 8008). With one exception, Montana's proposed revision provides revegetation requirements equivalent to SMCRA 515(b)(19) and 30 CFR 816/817.111(a). The exception, as was discussed in the February 16, 2005 **Federal Register** Notice (Finding C.14.a) addressing the identical statutory language, is that Montana's proposal at proposed subparagraph (1)(a) would not require operators to plant water areas, surface areas of roads, "and other constructed features." The Federal requirements of SMCRA 515(b)(19), as implemented at 30 CFR 816/817.111(a), provide only the first two exemptions. The third exemption provided by Montana, "and other constructed features," is undefined. All of reclamation could be considered "constructed," so this exemption could broadly be construed to apply to the whole affected area. We believe that Montana intended here that this exemption would be applied to parking lots, material storage yards, etc., that are limited in size and slope, and are stabilized against erosion by paving or gravel. Therefore, consistent with our decision in the February 16, 2005, **Federal Register**, we are approving ARM 17.24.711(1)(a) with the proviso that the exemption for "and other constructed features approved as part of the postmining land use" not be applied until (1) Montana promulgates rules that provide for a clear definition of "other constructed features" and provide for limits on size and slope and stabilization against erosion, and other factors that may affect environmental stability, and (2) those rules are approved by OSM.

Montana also amends its rules at ARM 17.24.711(1)(a)(1), subparagraph (d), by proposing a limitation that the revegetation need only be capable of stabilizing soil erosion to the extent appropriate for the postmining land use. Consistent with our decision in the February 16, 2005, **Federal Register** notice, we are approving Montana's proposed amendment with the understanding that revegetation success standards must be representative of

unmined lands under that proposed postmining land use in the area. In other words, the erosion control achieved by revegetation that meets the success standards will be equivalent to the erosion protection of unmined lands being used for the same purpose within that general vicinity. This is particularly true when an alternative "higher or better," land use is being established during reclamation.

7. ARM 17.24.1109; Bonding: Letters of Credit. Montana proposes to revise subparagraph (1)(d), and add new subparagraphs (1)(e), (f), and (g) to read as follows:

(d) The letter must not be for an amount in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant for the most recent annual reporting period.

(e) Using the balance sheet referenced in (1)(d) and a certified income and revenue sheet, the bank must meet the three following criteria:

(i) The bank must be earning at least a 1% return on total assets (net income/total assets = 0.01 or more);

(ii) The bank must be earning at least a 10% return on equity (net income/total stockholders equity = 0.1 or more); and

(iii) Capital or stockholders' equity must be at least 5.5% of total assets (total stockholders equity [shareholders equity + capital surplus + retained earnings])/total assets = 0.055 or more).

(f) Under a general financial health category, from either Sheshunoff Information Services, Moody's (Mergent Ratings Service) or Standard and Poor's, the bank must have a b+ or better rating for the current and previous two quarters.

(g) The bank's qualifications must be reviewed yearly prior to the time the letter of credit is renewed.

There are no similar provisions in SMCRA or the Federal regulations. Montana states that the proposed amendment to (1)(d) requires the balance sheet to be for the most recent annual reporting period to assure that the Department bases its evaluation of the financial condition of the bank on current financial information. Montana also notes that the proposed addition of (1)(e) and (f) provides prudent standards for the Department to follow when evaluating whether to accept a letter of credit from an issuing bank, and goes on to explain that these financial tests were developed in consultation with the Banking and Financial Division of the Montana Department of Commerce and are used by the Office of Surface Mining in accepting letters of credit. Lastly, Montana states that the proposed addition of (1)(g) is necessary because a bank's financial health may change over time.

We agree with Montana that the proposed revisions requiring an up-to-

date balance sheet, applying additional financial tests and criteria regarding the acceptance of letters of credit, and performing annual evaluations of a bank's qualifications will allow for a stronger analysis of a lending institution's current financial condition and will provide further assurance of a bank's financial strength. Montana's proposed amendment provides guidance beyond that contained in the Federal regulations. We find that the underlying rationale Montana provided for justifying the addition of these provisions is reasonable and the lack of exact Federal counterpart requirements do not render them less effective than the Federal regulations. Therefore, we approve them.

#### *F. Revisions to Montana's Rules That Are Not the Same as the Corresponding Provisions of SMCRA and/or the Federal Regulations*

1. ARM 17.24.301(33); Definition of "Diversion." Montana proposes to revise the definition of "Diversion" to read as follows:

"Diversion" means a channel, embankment, or other manmade structure constructed to divert undisturbed runoff around an area of disturbance and back to an undisturbed channel.

The Federal definition at 30 CFR 701.5 states that "*Diversion* means a channel, embankment, or other manmade structure constructed to divert water from one area to another."

Montana's proposed definition applies only to structures designed to divert water around the operation. The Federal definition includes all structures constructed to divert water, but its application in 30 CFR 816.43 involves only structures designed to divert water around an operation. Therefore Montana's proposed change is consistent with and no less effective than the Federal definition and we are approving it.

2. ARM 17.24.308; Operations Plan. Montana proposes to revise subparagraph (1)(b) by adding the following new subsection to the proposed operations for which compliance must be demonstrated:

(vii) Facilities or sites and associated access routes for environmental monitoring and data gathering activities [or] for the gathering of subsurface data by trenching, drilling, geophysical or other techniques to determine the nature, depth, and thickness of all known strata, overburden, and coal seams.

In its explanatory note, Montana states that the proposed addition of (b)(vii) specifies additional information that needs to be included in a plan of operations when prospecting activities

and facilities are transferred to a strip or underground mining permit pursuant to ARM 17.24.1001(7). Further, Montana notes that the word "or" was mistakenly left out of this provision as printed in the final rule notice by the Secretary of State, and will need to be added in the next rulemaking. Montana's proposed addition of this rule provides needed specificity with respect to requiring additional facilities information, is more stringent than the Federal requirements, and therefore is not inconsistent with the Federal rules at 30 CFR 780.11(b). For these reasons, we approve it.

3. ARM 17.24.313; Reclamation Plan. Montana proposes to add a new provision at (1)(d)(v) requiring that the plan for backfilling demonstrate that the proposed postmining topography can be achieved. Montana further proposes to add provisions at (1)(e) and (f), respectively, that require each reclamation plan to contain a description of postmining drainage basin reclamation that ensures protection of the hydrologic balance, achievement of postmining land use performance standards, and prevention of material damage to the hydrologic balance in adjacent areas, as well as drainage channel designs appropriate for preventing material damage to the hydrologic balance in the adjacent area and to meet the performance standards for the reclamation of drainage basins at ARM 17.24.634.

Montana's proposed rule at ARM 17.24.313(1)(d)(v) is added to restate more clearly the requirement that a reclamation plan contain a demonstration that the postmining topography can be achieved. The proposed revision simply provides additional guidance and specificity regarding information to be supplied by an operator to gauge the potential for success with respect to achieving postmining topography. The proposed rules at subparagraphs (e) and (f) essentially replace and are more comprehensive than the design requirements for drainage channels currently located at ARM 17.24.634(2), which is proposed for deletion. These additional requirements are no less effective than the Federal hydrologic reclamation plan requirements set forth at 30 CFR 780.21(h). For the reasons discussed above, we are approving Montana's proposed rules.

4. ARM 17.24.313(b) (second sentence), 17.24.515(2), 17.24.821, 17.24.823, 17.24.824, and 17.24.825; Revisions to "Alternate Reclamation" Rules. In a previous amendment, Montana proposed to delete its statutory provisions at MCA 82-4-232(7) and (8) addressing "alternate reclamation" and

replace them with new paragraphs providing requirements for "land capability and alternative land uses." We approved Montana's proposed statutory changes in the February 16, 2005, **Federal Register** (70 FR 8001, 8007, Finding C.12), and noted that several rules within the Montana program were statutorily authorized only by the deleted paragraphs. We further stated that since the statutory authorization for these rules would no longer exist, Montana would have to remove these rules when promulgating new rules to implement the statutory changes.

Consistent with our February 16, 2005 decision, Montana now proposes to revise its implementing rules for "alternate reclamation" at ARM 17.24.313(b) (second sentence), 17.24.515(2), 17.24.821, 17.24.823, 17.24.824, and 17.24.825, respectively, by deleting paragraphs addressing "alternatives" to backfilling, grading, highwall elimination, topsoiling, and planting of a permanent diverse cover. Because the statutory authorization for these rules and paragraphs referencing "alternate reclamation" no longer exists, we approve their deletion. In their place, Montana proposes to substitute new criteria at ARM 17.24.821 and 17.24.823 for "alternative postmining land uses" as enacted in HB 373 and approved by us in the February 16, 2005, **Federal Register** as being consistent with and no less effective than SMCRA 515(b)(2) and the Federal regulations at 30 CFR 816/817.133. Thus, Montana's proposed revisions to its rules implementing the previously approved statutory alternative postmining land use criteria are appropriate and we approve them. Montana also proposes to delete its "alternate reclamation" rule at ARM 17.24.826 addressing "period of responsibility for alternative revegetation" due to changes enacted in HB 373. For the same reasons explained above, we approve it.

5. ARM 17.24.404; Review of Application. Montana proposes to delete paragraph (9) of this rule because the right to appeal a permitting decision is already covered in Montana's statutes at 82-4-231(9), MCA. Paragraph (10) is proposed for deletion because Montana applies the same standards to all applications and 82-4-231(11), MCA, requires operations to be conducted in such a manner so as to protect property adjacent to the permit area. Existing ARM 17.24.404(9) grants the right to an administrative hearing only to applicants who are subject to a denial of a permit application or major revision under 82-4-227(11), MCA. 82-4-231(9),

MCA, is much broader in the sense that it entitles any person with an interest that is or may adversely be affected by the Department's permit decision to a contested case hearing governed by the Montana Administrative Procedures Act and before the Board of Environmental Review. Thus, Montana's proposed deletion of ARM 17.24.404(9), in reliance on 82-4-231(9), MCA, is no less stringent than SMCRA 514(c) and we approve it. Existing ARM 17.24.404(10) is duplicative of and less specific than the standards set forth in 82-4-231(11), MCA, regarding the protection of areas outside the permit area. Similarly, Montana's proposed deletion of 17.24.404(10), in reliance on 82-4-231(11), MCA, is no less stringent than SMCRA 515(b)(21) and we also approve it.

6. ARM 17.24.515; Highwall Reduction. Montana proposes to revise paragraph (1) to require that highwalls must be eliminated and the reduced highwall slope must be no greater than whatever slope is necessary to achieve a minimum long-term static safety factor of 1.3. Montana also proposes to revise paragraph (2) by deleting existing subparagraph (2)(c), which provides that highwall reduction alternatives must comply with ARM 17.24.313, 17.24.821-17.21.824 (see Finding No. III.F4). Montana deleted these cross-references because the rules have either been eliminated or are no longer relevant due to statutory modifications that we approved in the February 16, 2005, **Federal Register** (70 FR 8001, 8007). In their place, Montana now proposes additional new language to read as follows:

(2) Highwall reduction alternatives may be permitted only to replace bluff features that existed before mining and where the department determines that:

(a) Postmining bluffs are compatible with the proposed postmining land use;

(b) Postmining bluffs are stable, achieving a minimum long-term static safety factor of 1.3;

(c) Similar geometry and function exists between pre- and postmining bluffs;

(d) The horizontal linear extent of postmining bluffs does not exceed that of the premining condition; and

(e) Highwalls will be backfilled to the extent that the uppermost mineable coal seam is buried in accordance with ARM 17.24.505(1).

Previously, OSM approved similar provisions for the New Mexico and Utah State regulatory programs (45 FR 86464, December 31, 1980 and 60 FR 28040, May 30, 1995). In the New Mexico and Utah approvals, OSM required the State programs to contain the following provisions: (1) Requirement for regulatory authority approval; (2)

restrictions on allowable height and length of the retained highwall in relation to natural escarpments and cliffs; (3) requirement that a retained highwall replace a preexisting cliff or similar natural premining feature that was removed by the mining operation; and (4) requirement for the permit applicant to demonstrate that the retained highwall feature is stable and will achieve a long-term static safety factor of 1.3 and will not pose a hazard to the public health and safety. With these restrictions, OSM found provisions for limited highwall retention in the New Mexico and Utah regulatory programs to be in accordance with the requirements of SMCRA 515(b)(3) and consistent with the Federal regulations at 30 CFR 816.102(a)(2) to backfill and grade to achieve the approximate original contour (AOC). AOC in these requirements includes the provision to eliminate all highwalls. The establishment of the above restrictions however, ensures that for a limited stretch of highwall to be retained, it must replace a similar feature that exists in the original contours thereby meeting the requirement to restore AOC. In the approval of the provision for New Mexico, OSM found that if an operator can demonstrate to the satisfaction of the Director (State) that all of the above criteria can be met, then the limited highwall retention is available. Such retention in these instances actually reflects the intent of "approximate original contour" since these features were part of the natural pre-mined landscape. These same criteria were recently applied in approving a Wyoming proposal to allow for the retention of limited stretches of highwall to replace escarpments and cliffs that exist naturally in the area of the mine prior to the mine operations (71 FR 50852, August 28, 2006).

Similarly, Montana's provisions for highwall retention to replace existing natural features are contained in ARM 17.24.515. As we required in the New Mexico, Utah, and Wyoming programs, Montana requires the features to be approved by the regulatory authority. In addition, Montana's provisions ensure stability and a factor of safety of 1.3; contain restrictions on allowable length in relation to premine features; and replacement of natural features that were mined out or are planned to be mined out under the current mine plan. Montana's proposed revisions do not contain specific language regarding habitat replacement, public health and safety, height restrictions, or define the term "bluff." Nevertheless, we interpret

the meaning of the phrase "postmining land use" in subparagraph (2)(a) to include plant and wildlife habitat, and the language in subparagraph (2)(b) to represent that postmining bluffs will not pose a threat to public health and safety. We also interpret the meaning of the phrase "similar geometry" found in subparagraph (2)(c) of Montana's provisions to include the restriction that the vertical height of bluffs not exceed the premine height. Lastly, we interpret the term "bluff" to mean a vertical or near vertical feature in the landscape. Based on these interpretations and the discussion above, we find Montana's provisions for limited highwall retention to be in accordance with SMCRA 515(b)(3) and consistent with 30 CFR 816.102(a)(2).

7. ARM 17.24.624; Surface Blasting Requirements. Montana proposes to revise its rules at subparagraphs (6)(a), (7)(a), and paragraphs (11) and (14) to simplify and provide consistency to the description of structures that are subject to blasting restrictions as they pertain to airblast, proximity of blasting operations, peak particle velocity, and the maximum weight of explosives to be detonated. These structures include "any dwelling, or public, commercial, community or institutional building."

Montana defines "Community or institutional building" in its rules at ARM 17.24.301(26) to mean "any structure, other than a public building or a dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services including, but not limited to, water supply, power generation or sewage treatment." The Federal regulations at 30 CFR 816.61(d)(1)(i), 816.67(b)(1)(i) and 816.68(d) consistently identify the structures subject to blasting restrictions as "dwelling, public building, school, church, community or institutional building." Montana's proposed revisions, when read in the context of its definition of "community or institutional building," are consistent with and no less effective than the Federal regulations. Therefore, we are approving Montana's proposed rule changes. For the same reasons discussed above, we are approving Montana's proposed revision to its rules at ARM 17.24.626(1)(d) regarding Records of Blasting Operations.

8. ARM 17.24.634; Reclamation of Drainage Basins. Montana proposes numerous revisions to reorganize ARM 17.24.634 so that all of the substantive

requirements for reclaiming drainage basins, including valleys, channels and floodplains, are listed after introductory paragraph (1). Proposed revised paragraph (1) reads as follows:

(1) Reclaimed drainage basins, including valleys, channels, and floodplains must be constructed to:

(a) Comply with the postmining topography map required by ARM 17.24.313(1)(d)(iv) and approved by the department;

(b) Approximate original contour;

(c) An appropriate geomorphic habit or characteristic pattern consistent with 82-4-231(10)(k), MCA;

(d) [Remains the same]

(e) Provide separation of flow between adjacent drainages and safely pass the runoff from a six-hour precipitation event with a 100-year recurrence interval, or larger event as specified by the department;

(f) Provide for the long-term relative stability of the landscape. The term "relative" refers to a condition comparable to an unmined landscape with similar climate, topography, vegetation and land use;

(g) Provide an average channel gradient that exhibits a concave longitudinal profile;

(h) Establish or restore a diversity of habitats that are consistent with the approved postmining land use, and restore, enhance where practicable, or maintain natural riparian vegetation as necessary to comply with ARM subchapter 7; and

(i) Exhibit dimensions and characteristics that will blend with the undisturbed drainage system above and below the area to be reclaimed and that will accommodate the approved revegetation and postmining land use requirements.

We note that reclaimed drainages meet the definition of "diversion" at ARM 17.24.301(33), and in particular are permanent diversions. Montana's proposed rule is consistent with 30 CFR 816.43(a)(3) requiring that a permanent diversion or stream channel that is reclaimed after removal of a temporary diversion be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel, as well as the regulations at 30 CFR 780.21(h), 816.41(a) and (d), and 816/817.43(b) requiring that diversions protect the hydrologic balance, water quality, and channel volume. The proposed rule also includes approximate original contour considerations consistent with those set forth in 30 CFR 816.102(a), and provides standards for the stabilization of reclaimed surface areas to effectively control erosion in accordance with 30 CFR 816.95(a). While there is no exact Federal counterpart to Montana's proposed rule, we find the revisions to be consistent with these Federal requirements.

Montana's explanatory note justifying the proposed rule revision at (1)(f)

"acknowledges that success in terms of stability cannot be measured using a one-size-fits-all standard. Rather, it must be made on a case-by-case basis comparing the reclaimed land to unmined landscapes with comparable conditions." We agree with Montana's logic and a discussion responding to comments on the promulgation of 30 CFR 816.95(a) in a January 10, 1983 **Federal Register** notice (48 FR 1160) is supportive of this position. Specifically, we stated that "[A]s with other performance standards proposed by OSM, regulatory authorities will have flexibility to develop stabilization measures consistent with local terrain, climate, soils, and other conditions existing within the State. Appropriate techniques to stabilize exposed areas can be determined by the regulatory authority and operators in conjunction with local Soil Conservation Districts and air quality agencies, as appropriate." Therefore, Montana has been afforded discretion to implement necessary stabilization measures with respect to exposed surface areas, including the reclamation of drainage basins. For the reasons discussed above, we find that Montana's proposed revisions are no less effective than the Federal requirements and we approve them.

9. ARM 17.24.718; Soil Amendments and Management Practices. Montana proposes to revise paragraph (2) and add a new paragraph (3) to read as follows:

(2) An operator may use only normal husbandry practices to ensure the establishment of vegetation consistent with the approved reclamation plan.

(3) Reclamation land use practices including, but not limited to, grazing, haying, or chemical applications, may not be conducted in a manner or at a time that interferes with establishment and/or persistence of seeded and planted grasses, forbs, shrubs, and trees or with other reclamation requirements.

Montana explains that the proposed revision to paragraph (2) requires operators to use only normal husbandry practices to manage reclaimed areas following seeding. Montana further states that normal husbandry practices are widely used and accepted by private, state, and federal land managers and land owners and have a proven track record of achieving appropriate revegetation for approved postmining land uses.

The Federal regulations at 30 CFR 816.116(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director of OSM, in

accordance with 30 CFR 732.17, that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions. Montana's proposed ARM 17.24.718(2) does not actually identify husbandry practices. It merely states that an operator may use only normal husbandry practices to ensure the establishment of vegetation consistent with the approved reclamation plan.

Based on the above discussion, we do not approve the proposed revision to ARM 17.24.718(2) and find that it is less effective than the Federal regulations at 30 CFR 816.116(c)(4) to the extent that it could be construed to authorize any normal husbandry practices other than those identified in proposed new paragraph ARM 17.24.718(3). If Montana wishes to include any normal husbandry practices other than those identified in ARM 17.24.718(3) that would not restart the liability period, they must be submitted as a program amendment and approved by OSM.

At its own initiative, Montana proposes new paragraph (3) to address management practices that could, if applied improperly, negatively impact revegetation and affect the operator's ability to obtain phase III bond release. The practices used by operators to manage vegetation on reclaimed areas include livestock grazing as well as haying and chemical applications. Montana further notes that under the proposed amendment, the operator would be responsible for using management practices that do not interfere with reclamation requirements.

We agree with Montana's rationale. Montana's proposed rule in paragraph (3) concerning reclamation land use practices is consistent with and no less effective than the Federal requirements for approved postmining land uses of the disturbed area set forth in 30 CFR 816.116(c)(4).

Therefore, with the exception of proposed ARM 17.24.718(2), which does not identify husbandry practices and allows an operator to use normal

husbandry practices that have not received approval from OSM in accordance with 30 CFR 732.17, we approve Montana's proposed revisions to ARM 17.24.718.

10. ARM 17.24.726; Vegetation Measurements. Montana proposes to revise this rule extensively, to read as follows:

(1) Standard and consistent field and laboratory methods must be used to obtain and evaluate vegetation data consistent with 82-4-233 and 82-4-235, MCA, and to compare revegetated area data with reference area data and/or with technical standards. Specific field and laboratory methods used and schedules of assessments must be detailed in a plan of study and be approved by the department. Sample adequacy must be demonstrated. In addition to these and other requirements described in this rule, the department shall supply guidelines regarding acceptable field and laboratory methods.

(2) Production, cover, and density shall be considered equal to the approved success standard when they are equal to or greater than 90% of the standard with 90% statistical confidence, using an appropriate (parametric or non-parametric) one-tail test with a 10% alpha error.

(3) The revegetated areas must meet the performance standards in (1) and (2) for at least two of the last four years of the phase III bond period. Pursuant to ARM 17.24.1113, the department shall evaluate the vegetation at the time of the bond release inspection for phase III to confirm the findings of the quantitative data.

(4) The reestablished vegetation must meet the requirements of the Noxious Weed Management Act (7-22-2101 through 7-22-2153, MCA, as amended). (History: 82-4-204, MCA; IMP, 82-4-233, 82-4-235, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1990 MAR p. 964, Eff. 5/18/90; AMD, 1994 MAR p. 2957, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

Several of Montana's proposed revisions, including combining existing paragraphs (2) and (3) regarding statistical standards and deleting existing paragraphs (4) through (7) pertaining to diversity and seasonality standards, are the result of and reflect enactment of the provisions in HB 373 that were approved in our decision published in the February 16, 2005, **Federal Register** (70 FR 8001). Montana proposes to revise paragraph (1) by deleting the requirement that specific field and laboratory methods be detailed in the permit application, and replaces it with the requirement that such sampling methods be included in a plan of study approved by the Department. In its explanatory note, Montana states that "submittal of a plan of study prior to conducting vegetation monitoring or sampling offers an opportunity to make

adjustments when needed; if the plan is in the approved permit, revisions must be done through the minor revision process. Thus, the last change to this section is recommended as a more workable, as well as flexible, avenue for submittal and approval of vegetation monitoring/sampling plans."

Montana's proposed revision conflicts with the Federal regulations at 30 CFR 780.18(b)(5)(vi), which require that each permit application contain a plan for reclamation and include measures proposed to be used to determine the success of revegetation, as required in 30 CFR 816.116, for the proposed permit area. In addition, the August 30, 2006 (71 FR 51684, 51691) **Federal Register** notice promulgating Federal revegetation success standards and responding to commenters' concerns noted that "[B]ecause § 780.18(b)(5) requires each permit application to identify its proposed success standards and sampling techniques, this information is also available for public review." Therefore, Montana is free to require the submittal of a plan of study from operators, but sampling methods must be included in the permit application. For these reasons, we do not approve Montana's proposal in paragraph (1) to delete the requirement that sampling methods be included and detailed in the permit application.

11. ARM 17.24.1116; Bonding Criteria and Schedule for Release of Bond. Montana proposes to revise this rule by adding a new provision at subparagraph (6)(b)(iii) that provides previously undefined revegetation standards for Phase II bond release. The new provision states that reclamation phase II is deemed to have been completed when:

Vegetation is establishing that is consistent with the species composition, cover, production, density, diversity, and effectiveness required by the revegetation criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, 17.24.731 and 17.24.815 and the approved postmining land use;

Montana notes that while renumbered (6)(b)(iv) requires the establishment of revegetation to the extent required to protect soil from accelerated erosion as a condition of phase II bond release, the rule does not provide standards for revegetation. Montana further states that the proposed amendment requires the revegetation to be consistent with the species composition, cover, production, density, diversity, and effectiveness criteria of the applicable rules and the approved postmining land use, although not to the extent that these standards have been achieved.

The Federal regulations at 30 CFR 800.40(c)(2) require that revegetation be established on regraded mined lands in accordance with the approved reclamation plan prior to Phase II bond release. The Federal regulations at 30 CFR 816/817.111(a) require that permittees establish on all regraded areas and disturbed areas a vegetative cover that is in accordance with the approved permit and reclamation plan and that is (1) diverse, effective and permanent; and (2) comprised of species native to the area, or introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority. Moreover, the Federal regulations at 30 CFR 816/817.116(a) and (b), respectively, require that the success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use and provide minimum required revegetation success standards to be applied with each approved postmining land use.

The cross-referenced provisions in Montana's proposed rule addresses the requirements for establishing successful revegetation on regraded and disturbed areas. The proposed rule provides additional guidance and specificity to ensure that the established revegetation is compatible with the approved postmining land use, and the standards for success are in accordance with the requirements necessary to secure phase II bond release. For these reasons, Montana's proposed rule defining revegetation standards for Phase II bond release is no less effective than the Federal regulations at 30 CFR 800.40(c)(2), 816/817.111(a), and 816/817.116(a) and (b) and we are approving it.

Montana also proposes to revise its rules at subparagraphs (6)(c)(i), (ii), and (iii) by ensuring that evaluations of reclamation success at Phase III bond release are applicable to and consistent with the approved postmining land use. For the same reasons discussed above, we approve Montana's proposed revisions as being no less effective than the Federal regulations at 30 CFR 800.40(c)(3) and 816/817.116(a) and (b).

12. ARM 17.24.1202; Consequences of Inspections and Compliance Reviews. Montana proposes to revise this rule by adding criteria in paragraph (2) concerning the Department's issuance of notices of noncompliance and orders of cessation in accordance with 82-4-251, MCA, which may result from an inspection; adding a provision in paragraph (3) reflecting the Department's statutory authority, as contained in 82-4-237(3), MCA, to order changes in the mining and

reclamation plans to give a complete list of actions the Department may take to ensure compliance with the Act following an inspection; and adding a provision in paragraph (4) that allows the Department to order an operator to investigate and submit a report detailing a corrective course of action for unsuccessful reclamation efforts when they cannot be cured by an abatement order in the context of a violation action because they were conducted according to the permit.

Montana's proposed revision to paragraph (2) is consistent with the Federal regulations at 30 CFR 840.13(b) regarding enforcement authority, as well as the cross-referenced provision at 30 CFR 843.12(a)(1) addressing determinations as to when a notice of violation is to be issued. Moreover, paragraph (2) is consistent with Montana's approved statutory provision at 82-4-251, MCA, regarding noncompliance and the suspension of permits. Paragraphs (3) and (4) impose additional requirements on permittees as a result of enforcement actions. Paragraph (3) is consistent with the statutory provision at 82-4-237(3), MCA, requiring changes in the mining and reclamation plans. Lastly, both SMCRA 521(d) and the Federal regulations at 30 CFR 840.13(d) provide that nothing therein "shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated" in either SMCRA or the Federal regulations. Therefore, the additional compliance requirements in paragraphs (3) and (4) are no less stringent than SMCRA and are consistent with the Federal regulations. For the reasons discussed above, we are approving Montana's proposed rules at ARM 17.24.1202(2)-(4).

Related to the finding above is Montana's proposed repeal of its existing provision at ARM 17.24.720 regarding Annual Inspections for Revegetated Areas. The cross-reference to this provision was previously located in existing ARM 17.24.1202(2), which has also been proposed for deletion. Montana's stated purpose for proposing both revisions is because the provisions for inspecting revegetated areas are restated in a broader context in paragraph (4) of proposed ARM 17.24.1202. Under that rule, the Department is required, based on a field inspection or review of records or reports, to order the operator to immediately investigate the cause of unsuccessful revegetation and the operator is required to subsequently

submit an investigative report detailing a corrective course of action. This approach is appropriate to address other aspects of reclamation that are discovered to be unsuccessful. Nevertheless, quarterly and annual Departmental oversight of reclamation efforts (including revegetation) will continue through both the partial and complete inspection requirements of ARM 17.24.1201. For these reasons, we are approving Montana's proposed repeal of ARM 17.24.720.

#### G. Removal of Required Amendments

##### 1. Required Amendment at 30 CFR 926.16(e)(1), the Definition of "Road"

In response to the required program amendment at 30 CFR 926.16(e)(1), Montana proposes to revise its rules at ARM 17.24.301(107) regarding the definition of "Road" by deleting language that excluded pioneer and construction roadways. The Federal definition at 30 CFR 701.5 was revised on November 8, 1988 (53 FR 45190, 45210), to eliminate the previous exclusion of pioneer and construction roadways, thereby making them subject to those road performance standards at 30 CFR 816/817.150-151 which are applicable to road construction. For this reason, we noted in the August 19, 1992, **Federal Register** (57 FR 37438), that Montana's proposed definition of "road," by excluding pioneer and construction roadways, was less effective than the Federal definition. Consequently, we required Montana to clarify that pioneer and construction roadways are subject to any general performance standards applicable to road construction. Montana's proposed deletion of the provision excluding pioneer and construction from its definition of "road" makes it consistent with and no less effective than the Federal definition at 30 CFR 701.5 and the performance standards for road construction set forth at 30 CFR 816/817.150-151, and we are removing the required program amendment at 30 CFR 926.16(e)(1).

##### 2. Required Amendment at 30 CFR 926.16(k), the Definition of "Historically Used for Cropland"

In response to the required program amendment at 30 CFR 926.16(k), Montana proposes to revise its rules at ARM 17.24.301(53) regarding the definition of "Historically used for cropland" by adding provision (c) to address lands that likely would have been used as cropland for any five or more years out of the 10 years immediately preceding their acquisition [including purchase, lease, or option of

the land for the purpose of conducting or allowing, through resale, lease or option, strip of underground coal mining and reclamation operations] but for the same fact of ownership or control of the land unrelated to the productivity of the land, in accordance with the Federal regulations at 30 CFR 701.5.

Montana's proposed definition is substantively the same as the Federal definition of "Historically used for cropland." Therefore, we have determined that Montana's program is consistent with and no less effective than the Federal regulations at 30 CFR 701.5 and remove the required program amendment at 30 CFR 926.16(k).

### 3. Required Amendment at 30 CFR 926.16(l), Public Notice and Opportunity to Comment on Coal Prospecting Permit Applications

In response to the required program amendment at 30 CFR 926.16(l), Montana proposes to revise its rules at ARM 17.24.1001(2)(q) concerning Permit Requirement by adding cross-references that modify its program to conform to the permit issuance procedures for public notice and opportunity to comment on coal prospecting permit applications and be no less effective than the Federal requirements at 30 CFR 772.12(c). Specifically, Montana proposes language requiring that an application for a prospecting permit must be made on forms provided by the Department and must be accompanied by "the proposed publication, in accordance with ARM 17.24.303(23). The procedures of ARM 17.24.401(3) and (5), 17.24.402, and 17.24.403 must be followed in the processing of a prospecting permit application." Montana's reference to ARM 17.24.303(23) is a typographical error and should read as ARM 17.24.303(1)(w). Montana is aware of this typographical error and has indicated that it will correct the mistake in the State's next rulemaking (Administrative Record No. MT-22-13). Referenced ARM 17.24.401(3) addresses the requirements associated with the filing of an application and notice. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(c)(1) and (2) regarding public notice and opportunity to comment. ARM 17.24.401(3)(c) also references paragraph (6), which requires that the complete permit application be made available for public inspection and copying. This provision is consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.15(a)

addressing public availability of information. Although it is not referenced in proposed ARM 17.24.1001(2)(q), Montana's rules at ARM 17.24.303 address the legal, financial, compliance and related information required in permit applications. Specifically, ARM 17.24.303(n) states, in pertinent part, that "\* \* \* The applicant may request confidentiality on any proprietary information within such documents." This provision is consistent with and no less effective than the corresponding Federal requirement at 30 CFR 772.15(b) regarding an applicant's request that proprietary information submitted as part of a permit application be kept confidential. Referenced ARM 17.24.401(5) addresses the requirement to provide written notification of Departmental decisions on permit applications to appropriate Federal, state, and local government officials. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(e)(1).

In the January 22, 1999 **Federal Register** (64 FR 3615) notice, we stated that Montana's proposal did not provide for permit issuance procedures which would include such requirements as "administrative and judicial appeals." In proposed ARM 17.24.1001(2)(q), referenced ARM 17.24.403 allows any person whose interests are or may be adversely affected by the Department's decision on a prospecting permit application submitted pursuant to ARM 17.24.401(1) to request that the Department hold an informal conference on that application. In addition, Montana's rules at ARM 17.24.425 provide for administrative review in the form of a contested case hearing to review the final decision of the Department concerning prospecting permit applications submitted under ARM 17.24.401. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(e)(2) insofar as the requirement to provide an opportunity for administrative appeal and review of Departmental decisions is concerned.

Montana's statutes at 82-4-206(1)(b), MCA, allow an applicant, permittee, or person with an interest that is or may be adversely affected by a decision by the Department approving or denying an application for a prospecting permit to request, in writing, a hearing before the Montana Board of Environmental Review within 30 days after the Department's decision. Montana's statute at 82-4-206(2), MCA, states that the contested case provisions of the

Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under subsection (1). After a contested case is heard before the Board of Environmental Review and it has rendered a decision, the decision may be appealed to district court, pursuant to the Montana Administrative Procedures Act provisions at 2-4-702, MCA. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(e)(2) insofar as the requirement to provide an opportunity for judicial appeal and review of Departmental decisions is concerned.

Referenced ARM 17.24.402 addresses requirements for submitting comments and written objections to Department decisions on permit applications. Specifically, ARM 17.24.402(2)(a) affords any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority the right to file written objections to an initial or revised application with the Department within 30 days after the last publication of the newspaper notice required in ARM 17.24.401(3). This provision is consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(c)(3).

Montana also proposes to revise its rules by adding new language at ARM 17.24.1001(6)(a)-(d) to maintain consistency with the Federal requirements regarding decisions on coal prospecting permit applications. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(d)(1) and (2).

Lastly, Montana proposes to add a new provision in paragraph (7) that provides an administrative mechanism for transferring prospecting-related activities and facilities to a valid mining permit whenever such activities or facilities become part of mine operations. The Federal regulations at 30 CFR 772.12(d)(3) require that terms of approval for coal exploration permit applications issued by regulatory authorities shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the regulatory program. Proposed paragraph (7) imposes just such a condition. Therefore, while there is no exact Federal counterpart to Montana's newly-added provision, we find it to be no less effective than the Federal requirements. We also note that the cross-reference to ARM 17.24.308(2) in proposed paragraph (7) is a typographical error and should read as

ARM 17.24.308(b). Montana is aware of this typographical error and has indicated that it will correct the mistake in the State's next rulemaking (Administrative Record No. MT-22-14).

For the reasons discussed above, we have determined that Montana's program is consistent with and no less effective than the Federal regulations at 30 CFR 772.12(c), (d) and (e), and 772.15, and we are removing the required program amendment at 30 CFR 926.16(l).

#### 4. Required Amendment at 30 CFR 926.16(m), Replacement of Adversely Affected Domestic Water Supplies

In response to the required program amendment at 30 CFR 926.16(m), Montana proposes to revise its rules at ARM 17.24.903(2) regarding General Performance Standards for underground coal mining by adding language that requires adversely affected water supplies to be replaced in accordance with the statutory provisions at MCA 82-4-243 (subsidence) and 82-4-253 (suit for damage to water supply), respectively, and its rule at ARM 17.24.648 (water rights and replacement), which refers to water supply for "domestic" use. Montana also deletes the requirement at ARM 17.24.911(7)(d) regarding Subsidence Control to "replace any adversely affected domestic water supply."

In the August 6, 2003, **Federal Register** (68 FR 46477) notice, we stated that Montana's proposed rule at ARM 17.24.911(7)(d) was too narrow in scope because it limited the water-replacement requirement to instances where subsidence has occurred and that subsidence has caused material damage or reduced the value or use of surface lands. The Federal requirement at 30 CFR 817.41(j) is not so limited, and applies to water supply contamination, diminishment, or interruption by any underground mining activities, regardless whether or not subsidence has occurred. We further noted that the sentence requiring water replacement in Montana's statutory provision for water replacement for underground mines at MCA 82-4-243 does not contain any limitation to subsidence, even though the entire section is entitled "Subsidence." For this reason, we did not approve the proposed rule and required Montana to further amend its rules to require the prompt replacement of any drinking, domestic or residential water supply that is contaminated, diminished, or interrupted by underground mining activities, regardless of the occurrence of subsidence or whether subsidence has caused material damage or reduced the

value or use of surface lands, to be no less effective in meeting the requirements of SMCRA 720(a)(2) than is 30 CFR 817.41(j).

As was mentioned previously, Montana's statutory provision for water replacement for underground mines at MCA 82-4-243(1)(b) does not contain any limitation to subsidence. In addition, the statutory requirement for replacement of water supplies affected by mining generally is provided for in MCA 82-4-253(3). Lastly, Montana's proposal to move the provision requiring replacement of adversely affected domestic water supplies from ARM 17.24.911(7)(d) to ARM 17.24.903, which contains general performance standards and requires replacement of all water supplies adversely affected by a permittee's operation, addresses our concern that water replacement for underground mines was limited to instances where subsidence had occurred. Based on the information provided by Montana, we have determined that Montana's program is consistent with and no less effective in meeting the requirements of SMCRA 720(a)(2) than is 30 CFR 817.41(j), and remove the required program amendment at 30 CFR 926.16(m).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. MT-22-3) and received four comment letters (two from the same group).

We received an extensive comment letter from a private citizen on January 18, 2006 (Administrative Record No. MT-22-7). The letter contained both general and narrative comments, as well as many section-by-section and minor editorial comments.

We also received two comment letters from the Bull Mountain Land Alliance (BMLA) (Administrative Record Nos. MT-22-8 and MT-22-11). These letters also contained both general and narrative comments, as well as several section-by-section comments that identified and asserted, without additional explanation, specific portions of Montana's proposed rule changes as being in conflict or inconsistent with our decision in the February 16, 2005, **Federal Register** notice.

Lastly, we received a comment letter from a second private citizen on January 28, 2006 (Administrative Record No. MT-22-9). The letter contained general and narrative comments regarding the restoration of hydrologic balance.

All four of the letters contained both general and narrative, as well as section-

by-section comments that were directed either explicitly or implicitly to the Montana Department of Environmental Quality for response. In addition, several of the comments focused on the previously identified flaws in HB 373 (MT-024-FOR) and OSM's subsequent decision thereon in the February 16, 2005 **Federal Register** Notice. In this case, the provisions that were disapproved by OSM in that amendment are also disapproved here and do not need to be addressed again. Also noted among the general comments were statements that the current sections of the MCA that are posted on the internet have been cleaned up to comply with OSM's February 16, 2005 decision regarding HB 373, but that extensive noncompliant language has not been deleted from the proposed regulations. In response, Montana notes in its proposed regulations that it has not yet deleted the unacceptable language because it will take another rulemaking to do so. Finally, a number of the comments alleged generally perceived problems with the Montana Program and its interpretation and anticipated implementation of the proposed rules.

In response, we note that we cannot comment here on how statutory or regulatory requirements are applied. The application of requirements to specific cases, including what standards are applicable to which parts of which mines over time, is subject to administrative and judicial review as part of the Montana program, and possibly under other parts of Montana law as well. In its regular oversight of State regulatory programs, OSM reviews the implementation of regulatory programs; OSM seeks input from the public (including the industry) in determining what parts of program implementation to review. Here we can comment only on the establishment of statutory and/or regulatory requirements. We note that when we initially approved the Montana program under SMCRA in 1980, OSM determined that the Montana program met SMCRA requirements. And in this action, we are also determining whether the proposed amendment is in accordance with SMCRA and the Federal regulations.

OSM's standard for review of State programs, as set forth in SMCRA 503(a), requires a State to demonstrate that it has the capability to carry out the provisions of the Act and meet its purposes through: (1) A State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of SMCRA; and (2) rules and regulations

consistent with regulations issued by the Secretary pursuant to SMCRA. Therefore, we will only address substantive comments to Montana's proposed rules that specifically allege inconsistencies and conflicts with SMCRA and/or the Federal regulations, and not general comments regarding internal decisionmaking and implementation functions that exist within the Montana program.

One private citizen and the BMLA commented that subparagraph (c) of Montana's revised definition of "approximate original contour" at ARM 17.24.301(13) concerning the phrase "and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area" is in conflict and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice regarding HB 373. In response, we refer the commenters to the discussion at Finding No. III.A. above regarding "contingent voidness." The BMLA also commented that subparagraph (d) of the definition requiring that the reclaimed surface configuration be appropriate for the postmining land use is in conflict and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we note that this requirement is identical to the corresponding statutory provision at 82-4-203(4)(d), MCA, that we approved in the February 16, 2005, **Federal Register** notice (70 FR 8001, 8004) regarding HB 373. In approving that provision, we found that it did not render the definition inconsistent with SMCRA, "provided the definition is interpreted as requiring that all four subparagraphs apply; that is, that subparagraph (d) does not take precedence over subparagraphs (a) through (c)." We further stated that "[T]o be no less effective than the Federal definition of AOC, subparagraph (d) may not be interpreted as authorizing selection of a postmining land use that would necessitate a deviation from the remainder of the AOC definition; i.e., the postmining land topography must still closely resemble the general surface configuration of the land prior to mining regardless of the nature of the approved postmining land use." Consistent with the above reasoning, we are approving subparagraph (d) of Montana's revised definition of "approximate original contour" at ARM 17.24.301(13)(d).

All three commenters either generally or specifically noted that Montana's proposed definition of "hydrologic balance" at ARM 17.24.301(54) concerning the phrase "as they relate to uses of land and water within the area

affected by mining and the adjacent area" does not comply with SMCRA, the Federal regulations, and OSM's decision in the February 16, 2005, **Federal Register** notice regarding HB 373. In response to these concerns, we again direct the commenters to the discussion at Finding No. III.A. above regarding "contingent voidness."

One private citizen commented that Montana's proposed revision to the definition of "incidental boundary revisions" at ARM 17.24.301(59) equates to a 10-times increase and is rather significant. Montana's stated reason for proposing the revision is that incidental boundary revisions are exempt from public notice and comment provisions applicable to permit amendments, and for strip mines 100 acres is a small area compared to the total mine acreage. Furthermore, incidental boundary revisions may not be used to increase the mined area. They only involve associated disturbances that have less impact than mining. OSM Directive REG-19, which delineates the criteria for determining incidental boundary revisions, does not include limitations on acreage. Moreover, we agree with the logic underlying Montana's proposal to increase its incidental boundary revision criteria from 10 to 100 acres and find it to be reasonable with respect to regional strip mining conditions, consistent with 30 CFR 774.13(d), and no less stringent than SMCRA 511(3).

The BMLA commented that Montana's proposed definition of "material damage" at ARM 17.24.301(67) is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we note that Montana's proposed definition contains identical language to the "material damage" definition we approved in the February 16, 2005 final rule and refer the commenter to Finding No. III.D.

The BMLA also commented that subparagraphs (1)(e)(ii), (f), (h)(i) and (x) of Montana's proposed rule at ARM 17.24.313 concerning reclamation plan requirements are in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we refer the commenter to Finding Nos. III.C. and III.F.3. for an explanation as to why these provisions are being approved in accordance with the Federal regulations.

Next, the BMLA commented that Montana's proposed deletion of its grazing plan rules at ARM 17.24.323 is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we refer the commenter to Finding No. III.E.2. for an explanation as to why this deletion is being approved.

One private citizen commented that Montana's proposed deletion of subparagraph (3) of its rules at ARM 17.24.522, concerning permanent cessation of operations, provides an open-ended time frame for reclamation to be completed. We disagree with this comment and submit that the deletion of subparagraph (3) does not leave an open-ended time frame as ARM 17.24.501(6)(b) requires backfilling and grading to be completed within two years after coal removal. Considering the size and extent of the surface mining operations in Montana, requiring operators to complete backfilling and grading operations within 2 years after coal removal ceases is both reasonable and realistic. The commenter is referred to Finding No. III.E.4. for an explanation as to why this deletion is being approved.

One private citizen and the BMLA commented that Montana's proposed revision to paragraph (2) of ARM 17.24.633, concerning water quality performance standards, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.E.5. for an explanation as to why this proposed revision is being approved.

One private citizen and the BMLA also commented that Montana's proposed revision to subparagraphs (1)(f), (h), and (i) of ARM 17.24.634, concerning reclamation of drainage basins, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.F.8. for an explanation as to why this proposed revision is being approved.

One private citizen commented that section (1)(e) of proposed ARM 17.24.639, concerning sedimentation ponds and other treatment facilities, does not make sense when reference 17.24.642(3) is consulted. The commenter is mistaken regarding this reference. ARM 17.24.639(1)(e) references paragraph (7) of 17.24.642 and not paragraph (3).

Both the BMLA, and to a lesser extent one private citizen, commented that proposed subparagraphs (1)(a)(1) and (2) of ARM 17.24.711, concerning establishment of vegetation, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.E.6. for an explanation as to why proposed subparagraph (1)(a)(1) is being approved, and Finding No. III.D. for subparagraph (1)(a)(2).

The BMLA commented that Montana's proposed revision to paragraph (1) of ARM 17.24.716, concerning method of revegetation, is in conflict or inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In its explanatory note, Montana states that the proposed amendment to paragraph (1) deletes unnecessary language and that cover and productivity standards are covered later in subchapter 7. We agree with Montana's reasoning and note that Montana's proposed amendment essentially provides more specificity than do the Federal rules. Moreover, this provision has been included under Finding No. III.C. as having the same meaning as the Federal regulations at 30 CFR 816.111(a) and (b) regarding general revegetation requirements, and 780.18(b)(5) concerning general reclamation plan revegetation requirements.

The BMLA further commented that Montana's proposed revision to paragraph (1) of ARM 17.24.717, concerning planting of trees and shrubs, is in conflict or inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. We disagree. In its explanatory note, Montana states that the proposed amendment fills a gap in the current rules by broadening ARM 17.24.717 to include planting requirements for shrubs. Montana further notes that shrubs are a woody species like trees and, thus, should be treated similarly. Lastly, Montana explains that the additional provisions of the proposed amendment require the planting of trees and shrubs as necessary to achieve the postmining land use to reflect the statutory requirement of 82-4-233(2)(a), MCA, and allow an operator flexibility in the timing of herbaceous seeding to reduce competition with the tree and shrub plantings/seedings. We agree with Montana's reasoning and note that the statutory requirement was approved by us in the February 16, 2005, **Federal Register** notice as exactly duplicating the Federal rules at 30 CFR 816/817.111(b) regarding general revegetation requirements. Accordingly, this provision has been included under Finding No. III.C. as having the same meaning as the Federal regulations at 30 CFR 816.111(b) regarding general revegetation requirements, and 816.116(b)(3)(ii) and (iii) concerning the postmining land use requirements for trees, shrubs, and vegetative cover.

The BMLA commented that Montana's proposed revision to paragraph (2) and addition of paragraph (3) to its rules at ARM 17.24.718, concerning soil amendments,

management techniques, and land use practices, is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we refer the commenter to Finding III.F.9. for an explanation regarding these proposed revisions.

One private citizen commented that newly-added section (2) of ARM 17.24.724, concerning revegetation success criteria, says nothing about the reference area being unmined, and that one of the standards by which to judge reclamation is by comparison to unmined reference areas. The commenter's concerns are misplaced. Section (2) provides a description of reference areas chosen for comparison, whereas revised section (1) requires that the success of revegetation be determined by comparison with unmined reference areas, or by comparison with technical standards.

The BMLA commented that Montana's proposed deletion of paragraph (4) of its rules at ARM 17.24.726, concerning vegetation measurements, is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In its explanatory note, Montana states that the diversity standards currently existing in (4) were modified by the 2003 legislative changes to the Act (codified in 82-4-235(1)(d), MCA), and are proposed for deletion. However, OSM's decision on these legislative changes published in the February 16, 2005, **Federal Register** disallowed the diversity standard in 82-4-235(1)(d), MCA, as promulgated by the 2003 legislature. Thus, Montana notes that it may need to reestablish a diversity standard in its next rule-making. For the reasons that follow, we will defer to the State with regard to this decision.

Neither SMCRA nor the Federal regulations define "diverse." But pertinent discussion is found in preambles to Federal regulations, which themselves discuss House Report No. 95-218 (see 47 FR 12597, March 23, 1982, and 48 FR 48141-48146, September 2, 1983). The rule preambles cited above state that: "Diverse" means sufficiently varied amounts and types of vegetation to achieve ground cover and support the postmining land use. The precise numbers required to achieve this diversity should be determined by regional climate and soil conditions. However, the ultimate test will be the sufficiency of the plant communities to assure survival of adequate number and varieties to achieve the postmining land use and the required extent of ground cover.

The standards set forth in Montana's statutes at 82-4-233(1), MCA, regarding

the general requirements for a diverse, effective, and permanent vegetative ground cover approved as part of the postmining land use and in accordance with the approved permit and reclamation plan are consistent with the Federal regulations at 30 CFR 816.111(a) which directly implement, with increased detail, SMCRA 515(b)(19). Further, 816.116(a)(1) provides that standards for success shall be selected by the regulatory authority. Therefore, while there is no exact Federal equivalent with respect to diversity standards, Montana's proposed deletion of paragraph (4) noted in Finding No. III.F.10 falls within the State's discretion to specify, according to the Federal regulations.

The BMLA commented that Montana's proposed addition to its rules at ARM 17.24.762(1)(a)-(d) concerning postmining land use, is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. We disagree and refer the commenter to Finding No. III.C. In its explanatory note, Montana states that the proposed amendment to paragraph (1) reflects the 2003 Legislature's enactment of HB 373 by adding references to 82-4-203(28) and 82-4-232(7), MCA, the statutory provisions reflecting the new reclamation standards. Montana further notes that the proposed addition of subparagraphs (1)(a) through (d) incorporates provisions that are necessary, in some instances, to determine the premining land use and compare the alternative postmining land use with the premining land use. These provisions were previously set forth in ARM 17.24.824, a rule addressing alternate reclamation that is proposed for repeal. In promulgating ARM 17.24.824, Montana relied on Federal regulations that actually applied to "alternative postmining land uses." Thus, Montana asserts that it is appropriate to transfer these provisions from ARM 17.24.824 to 17.24.762 because they are still relevant and required by Federal regulations at 30 CFR 816/817.133.

We agree with Montana's underlying rationale for relocating existing language from its alternate reclamation rules at ARM 17.24.824(2) to implement the statutory alternative postmining land use requirements at 82-4-232(7), MCA, regarding land use capability, that were enacted in HB 373 and approved by us in the February 16, 2005, **Federal Register** (70 FR 8002) as being consistent with and no less effective than SMCRA 515(b)(2) and the Federal regulations at 30 CFR 816/817.133.

The BMLA further commented that Montana's proposed revision to

subparagraphs (1)(a) of ARM 17.24.823, concerning the approval of alternative postmining land use plans, is in conflict or inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. We disagree and refer the commenter to our discussion in Finding No. III.F.4. In its explanatory note, Montana states that the proposed amendment to paragraph (1) reflects the 2003 Legislature's enactment of HB 373, substituting "alternative postmining land use" for "alternate reclamation." Montana further explains that the proposed amendment to subparagraph (1)(a) cites approval criteria for alternative postmining land uses enacted by the 2003 Legislature in HB 373. We agree with Montana and note that the "alternative postmining land use" requirements at 82-4-232(8), MCA, regarding land use capability were enacted in HB 373 and approved by us in the February 16, 2005, **Federal Register** (70 FR 8002) as being consistent with and no less stringent than SMCRA 515(b)(2) and no less effective than the Federal regulations at 30 CFR 816/817.133. Similarly, the alternative postmining land use requirements at 82-4-232(9), MCA, concerning wildlife enhancement were approved (70 FR 8002) as being no less stringent than SMCRA 515(b)(24). Thus, Montana's proposed revisions to its rules implementing the previously approved statutory alternative postmining land use criteria are appropriate.

Both the BMLA, and to a lesser extent one private citizen, commented that proposed subparagraph (6)(b)(iii) of ARM 17.24.1116, concerning bonding criteria and schedule for release of bond, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.F.11. for an explanation as to why proposed subparagraph (6)(b)(iii) is being approved. The same finding addresses the BMLA's similar comment regarding revised subparagraphs (6)(c)(i), (ii) and (iii).

Both the BMLA and one private citizen commented that Montana's proposed revisions to its rules at ARM 17.24.1202, regarding consequences of inspections and compliance reviews, weakens the concept of the powers of an inspector on the ground below Federal standards. The commenters further stated that Section 517(e) of SMCRA says that upon detection of a violation, the inspector informs the operators and reports in writing any such violation to the regulatory authority. The Department can rule on the violation

later, but the inspector on the ground has the power to write it. Lastly, the commenters asserted that the inspector is a law enforcement officer and his ability to write violations is central to effective enforcement. In response, we refer the commenters to Finding No. III.F.12. for an explanation as to why Montana's proposed revisions to ARM 17.24.1202 are approved as being no less stringent than SMCRA and no less effective than the Federal regulations.

The private citizen further commented that Montana's proposed revision to its rules at ARM 17.24.1201, concerning frequency and methods of inspections, omits a counterpart to the Federal rules at 30 CFR 840.11(d)(2) regarding reporting requirements for aerial inspections. We agree with the commenter and note that Montana recognizes this omission and has committed to propose a State counterpart provision in its next rulemaking (Administrative Record No. MT-22-12).

#### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT-22-3). We received comments from two Federal Agencies.

The Bureau of Land Management (BLM) commented in an October 6, 2005 letter (Administrative Record No. MT-22-4), and the Bureau of Indian Affairs (BIA) commented in an October 12, 2005 memorandum (Administrative Record No. MT-22-5).

The BLM commented on Montana's proposed addition of subparagraph (4) to ARM 17.24.322, concerning Geologic Information and Coal Conservation Plan, which allows the Department to review all applicable coal recovery information retained by the BLM for an operator with a Federal Resource Recovery and Protection Plan in lieu of or in addition to other information requirements. Specifically, the BLM stated that it treats information designated as Proprietary/Confidential contained in the Resource Recovery and Protection Plan subject to the requirements of the Freedom of Information Act (FOIA). The BLM further stated that release of this information to the Montana DEQ will require compliance with established rules and procedures. In response, we agree with the BLM's comment that any proprietary and confidential information sought by the Montana DEQ and contained in the Resource Recovery and Protection Plan will need to be

scrutinized under the protections of the FOIA.

The BLM also commented on Montana's explanatory note which states that the proposed addition of paragraph (4) provides for an alternative source of relevant information for Department review that may preclude the need for the applicant to generate new or additional documents. Specifically, the BLM stated that the rationale is vague in that information contained in the Resource Recovery and Protection Plan is not "new" data, and that the operator already has this information on hand and would gladly supply it to the Montana DEQ if requested. In response, we acknowledge the BLM's comment and suggest that since the information contained in the Resource Recovery and Protection Plan has traditionally not been requested from operators in the past, it may be considered to be an alternative, new, and additional source of information in the context of the Montana DEQ's newly-proposed rule.

The BIA indicated that it did not have concerns about the proposed amendment, but provided specific concerns of an editorial nature as follows:

Page 13, Section 17.24.306(3): The U.S. natural resources conservation service should be capitalized.

Page 15, Section 17.24.312(2): The U.S. fish and wildlife service should be capitalized.

Page 21, Section 17.24.322(4): The bureau of land management should be capitalized.

Page 21, Section 17.24.323 has been struck. However, the "History" section remains. We don't understand the rationale for leaving the "History" component.

Page 24, Section 17.24.405(5): The end of the sentence is marked by a division symbol than a hyphen or colon.

In response, we acknowledge the BIA's editorial comments and are alerting Montana of the need to make these corrections by virtue of this **Federal Register** final rule notice. We also note that, according to Montana, the "History" section remains in Montana's rules following the deletion of a provision because of the State requirement for repealed rules in which the rule number, title, and history must remain intact. This requirement is to allow for tracking of repealed rules, and to indicate a rule number that can never be used again.

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. MT-22-3). EPA did not respond to our request.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 13, 2005, we requested comments on Montana's amendment (Administrative Record No. MT-22-3), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings, we approve, with certain exceptions and an additional requirement, Montana's August 29, 2005 amendment. We do not approve the following provisions or parts of provisions.

As discussed in Finding No. III.E.6, and consistent with the February 16, 2005 **Federal Register** Notice addressing identical statutory language, we are approving ARM 17.24.711(1)(a) with the proviso that the exemption for "and other constructed features" not be applied until Montana promulgates implementing rules to limit the exemption and OSM has approved those rules.

We are removing existing required amendments and approving, as discussed in: Finding No. III.G.1, ARM 17.24.301(107), concerning the definition of "Road;"; Finding No. III.G.2, ARM 17.24.301(53), concerning the definition of "Historically used for cropland;"; Finding No. III.G.3, ARM 17.24.1001(2)(q), concerning permit issuance procedures for public notice and opportunity to comment on coal prospecting permit applications; and Finding No. III.G.4, ARM 17.24.903(2), concerning replacement of water supplies harmed by underground mining activities.

As discussed in Finding No. III.F.9, we do not approve revised ARM 17.24.718(2), concerning Montana's allowance for an operator to use husbandry practices that have not received approval from OSM.

As discussed in Finding No. III.F.10, we do not approve revised ARM 17.24.726(1), concerning Montana's proposal to delete the requirement that sampling methods be included and detailed in the permit application.

To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has

the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### *Effect of OSM's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Montana program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Montana to enforce only approved provisions.

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business

Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million.  
 b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon

counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 2, 2007.

**Allen D. Klein,**

*Regional Director, Western Region.*

■ For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

**PART 926—MONTANA**

■ 1. The authority citation for part 926 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

**§ 926.15 Approval of Montana regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
August 31, 2005	October 10, 2007	ARM 17.24.301(6); 17.24.301(11); 17.24.301(13) (intro) and (a), (b), and (d); 17.24.301(26); 17.24.301(33); 17.24.301(36); 17.24.301(38); 17.24.301(46); 17.24.301(50); 17.24.301(54); 17.24.301(59); 17.24.301(64); 17.24.301(64)(b), (c), (d), (g), and (h); 17.24.301(67); 17.24.301(90); 17.24.301(103); 17.24.301(107)(b); 17.24.301(143); 17.24.302; 17.24.303(1)(w), (x), and (y); 17.24.305(2)(b)(i); 17.24.308(1)(b)(vii); 17.24.312(1)(b); 17.24.313; 17.24.321(1) and (3); 17.24.322(2)(a)(x) and (4); 17.24.323; 17.24.324(1)(e); 17.24.401(3)(f) and (5)(a)(iv); 17.24.404(9) and (10); 17.24.405(1) and (2), (6)(j), and (7); 17.24.416(1)(b); 17.24.413(1)(f); 17.24.427(1)(a), (c) and (2); 17.24.501(4)(a), (d) and (6)(d); 17.24.515; 17.24.522(3); 17.24.603(4); 17.24.605(8); 17.24.609(1); 17.24.623(2) and (5)(b); 17.24.624(4), (6)(a), (7)(a), (11) and (14); 17.24.626(1)(j); 17.24.633(2); 17.24.634; 17.24.636(2) and (3); 17.24.639(2), (3) and (7); 17.24.642(1)–(7); 17.24.646(4); 17.24.701(4); 17.24.702(4)(b) and (6); 17.24.711; 17.24.714(1); 17.24.716(1), (3), (4), and (5); 17.24.717(1); 17.24.718(3); 17.24.719; 17.24.720; 17.24.724(1)–(3); 17.24.726 except at (1) the proposed deletion of the phrase “the application and must;” 17.24.728; 17.24.751(1) and (2)(a), (c), (e), and (f); 17.24.762(1)(a)–(d), (2), and (3); 17.24.764; 17.24.815(1)(a)(i), (ii) and (b); 17.24.821; 17.24.823; 17.24.824; 17.24.825; 17.24.826; 17.24.832(4) and (5)(b) and (c); 17.24.1001; 17.24.1104(1) and (3); 17.24.1108(1), (2) and (4); 17.24.1109(1)(d)–(g); 17.24.1116; 17.24.1125(2); 17.24.1132(1)(a); 17.24.1133(2)(a), (b), and (3); 17.24.1201(1)–(4); 17.24.1202; 17.24.1301; also all minor, editorial, and codification changes.

**§ 926.16 [Amended]**

■ 3. Section 926.16 is amended by removing and reserving paragraphs (e)(1), (k), (l) and (m).

[FR Doc. E7–19851 Filed 10–9–07; 8:45 am]

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Vol. 72, No. 195

Wednesday, October 10, 2007

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### FEDERAL REGISTER PAGES AND DATE, OCTOBER

55655-56008..... 1  
 56009-56240..... 2  
 56241-56616..... 3  
 56617-56882..... 4  
 56883-57194..... 5  
 57195-57482..... 9  
 57483-57838.....10

### CFR PARTS AFFECTED DURING OCTOBER

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.

#### 3 CFR

##### Proclamations:

6641 (See  
 Proclamation 8180) .....56171  
 8180.....56171  
 8181.....56613  
 8182.....56615  
 8183.....56879  
 8184.....56881  
 8185.....57477  
 8186.....57479  
 8187.....57481  
 8188.....57483

##### Executive Orders:

11145 (Continued by  
 EO 13446).....56175  
 11183 (Continued by  
 EO 13446).....56175  
 11287 (Continued by  
 EO 13446).....56175  
 12131 (Continued by  
 EO 13446).....56175  
 12196 (Continued by  
 EO 13446).....56175  
 12216 (Continued by  
 EO 13446).....56175  
 12367 (Continued by  
 EO 13446).....56175  
 12382 (Continued by  
 EO 13446).....56175  
 12473 (See  
 EO 13447) .....56179  
 12905 (Continued by  
 EO 13446).....56175  
 12994 (Amended by  
 EO 13446).....56175  
 13226 (Continued by  
 EO 13446).....56175  
 13231 (Continued by  
 EO 13446).....56175  
 13237 (Continued by  
 EO 13446).....56175  
 13256 (Continued by  
 EO 13446).....56175  
 13262 (See  
 EO 13447) .....56179  
 13265 (Continued by  
 EO 13446).....56175  
 13270 (Continued by  
 EO 13446).....56175  
 13369 (Revoked by  
 EO 13446).....56175  
 13379  
 (See EO 13446) .....56175  
 13385 (Superseded in  
 part by EO 13446).....56175  
 13386  
 (See EO 13446) .....56175  
 13445.....56165  
 13446.....56175  
 13447.....56179

##### Administrative Orders:

Memorandums:

#### Memorandum of

September 28,  
 2007 .....56871  
 Presidential  
 Determinations:  
 No. 2007-34 of  
 September 28,  
 2007 .....56873  
 No. 2007-35 of  
 September 28,  
 2007 .....56875

#### 5 CFR

1201.....56883  
 1210.....56883  
 1215.....56883  
 1830.....56617  
 2634.....56241  
 2638.....56241  
**Proposed Rules:**  
 352.....56019

#### 7 CFR

28.....56242  
 301.....57195  
**Proposed Rules:**  
 6.....56677  
 Ch. VIII.....56945  
 962.....56678

#### 8 CFR

103.....56832  
 204.....56832  
 213a.....56832  
 299.....56832  
 322.....56832

#### 10 CFR

2.....57416  
 20.....55864  
 30.....55864  
 31.....55864  
 32.....55864  
 33.....55864  
 35.....55864  
 50.....55864, 57416  
 51.....57416  
 52.....57416  
 61.....55864  
 62.....55864  
 72.....55864  
 100.....57416  
 110.....55864  
 150.....55864  
 170.....55864  
 171.....55864

##### Proposed Rules:

50.....56275  
 52.....56287  
 430.....57254

#### 11 CFR

113.....56245

**12 CFR**  
201 .....56889  
204 .....56555  
218 .....56514  
701 .....56247  
**Proposed Rules:**  
233 .....56680

**14 CFR**  
39 .....55657, 56254, 56256,  
56258, 56262, 56618, 56890,  
56891, 57195  
71 .....57485, 57486  
91 .....57196  
95 .....56009  
97 .....56266, 56894  
119 .....57196  
121 .....57196  
135 .....57196  
**Proposed Rules:**  
39 .....56700, 56945, 57502  
91 .....56947

**15 CFR**  
19 .....57198  
21 .....57198  
22 .....57198  
748 .....56010

**17 CFR**  
240 .....56514, 56562  
247 .....56514

**18 CFR**  
**Proposed Rules:**  
410 .....57255  
806 .....55711  
808 .....55711

**21 CFR**  
516 .....57199  
522 .....56896  
556 .....56896, 57199  
558 .....56896  
**Proposed Rules:**  
870 .....56702  
1314 .....55712

**24 CFR**  
203 .....56002, 56156

**26 CFR**  
1 .....56619, 57487  
**Proposed Rules:**  
1 .....57503

301 .....56704

**28 CFR**  
**Proposed Rules:**  
16 .....56704

**30 CFR**  
926 .....57822  
938 .....56619  
**Proposed Rules:**  
250 .....56442  
253 .....56442  
254 .....56442  
256 .....56442  
780 .....57504  
784 .....57504  
816 .....57504  
817 .....57504

**31 CFR**  
**Proposed Rules:**  
132 .....56680

**32 CFR**  
213 .....56011  
752 .....56267  
**Proposed Rules:**  
212 .....56021

**33 CFR**  
117 .....56013, 56898, 57487  
165 .....56014, 56898, 57200  
**Proposed Rules:**  
117 .....56025  
165 .....56308, 56972  
169 .....56600

**37 CFR**  
**Proposed Rules:**  
381 .....57101

**38 CFR**  
**Proposed Rules:**  
5 .....56136

**39 CFR**  
111 .....56901, 57488  
**Proposed Rules:**  
111 .....57505, 57506, 57507

**40 CFR**  
9 .....56903  
51 .....55657  
52 .....55659, 55664, 55666,

56268, 56623, 56911, 56914,  
57202, 57207, 57209  
59 .....57215  
81 .....57207  
82 .....56628  
97 .....55657, 55666, 56914,  
57209  
141 .....57782  
142 .....57782  
180 .....57489, 57492  
721 .....56903, 57222  
750 .....57235  
761 .....57235  
**Proposed Rules:**  
51 .....55717  
52 .....55723, 56312, 56706,  
56707, 56974, 56975, 57257  
81 .....56312  
180 .....56325  
271 .....57258

**42 CFR**  
411 .....57634  
412 .....57634  
413 .....57634  
418 .....55672  
489 .....57634  
1001 .....56632  
**Proposed Rules:**  
71 .....55729

**44 CFR**  
65 .....57241  
67 .....56920, 57245  
**Proposed Rules:**  
67 .....56975

**46 CFR**  
515 .....56272

**47 CFR**  
1 .....56015  
22 .....56015  
24 .....56015  
27 .....56015  
76 .....56645  
90 .....56015, 56923  
101 .....55673

**48 CFR**  
**Proposed Rules:**  
1516 .....56708  
1533 .....56708  
1552 .....56708

**49 CFR**  
105 .....55678  
106 .....55678  
107 .....55678  
110 .....55678  
130 .....55678  
171 .....55678  
172 .....55678  
173 .....55678  
174 .....55678  
175 .....55678  
176 .....55678  
178 .....55678  
179 .....55678  
180 .....55678  
365 .....55697  
369 .....55697  
381 .....55697  
382 .....55697  
383 .....55697  
384 .....55697  
385 .....55697  
386 .....55697  
387 .....55697  
388 .....55697  
389 .....55697  
390 .....55697  
391 .....55697  
392 .....55697  
393 .....55697  
395 .....55697  
397 .....55697  
571 .....57450  
**Proposed Rules:**  
565 .....56027  
571 .....56713, 57260, 57459

**50 CFR**  
21 .....56926  
229 .....57104  
635 .....56929, 57104  
648 .....55704, 57104, 57500  
660 .....55706, 55707, 55708,  
55709, 56664  
679 .....56016, 56017, 56273,  
56274, 56933, 56934, 57252,  
57501  
697 .....56935  
**Proposed Rules:**  
17 .....56979, 57273, 57276,  
57278, 57511, 57740  
635 .....55729, 56036, 56330

**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 OCTOBER 10, 2007****COMMERCE DEPARTMENT  
National Oceanic and Atmospheric Administration**

Fishery conservation and management:  
Northeastern United States fisheries—  
Summer flounder;  
published 10-10-07

**ENVIRONMENTAL PROTECTION AGENCY**

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:  
Furilazole; published 10-10-07  
Spinetoram; published 10-10-07

**HOMELAND SECURITY DEPARTMENT****Coast Guard**

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:  
Savannah River, GA;  
published 9-10-07

**INTERIOR DEPARTMENT****Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:  
Montana; published 10-10-07

**POSTAL SERVICE**

Domestic Mail Manual:  
Temporary mail forwarding policy; published 10-10-07

**TREASURY DEPARTMENT  
Internal Revenue Service**

Income taxes:  
Qualified small business stock; deferral of sale gains by partnerships and their partners  
Correction; published 10-10-07

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:

Asian longhorned beetle; comments due by 10-19-07; published 8-20-07 [FR E7-16297]

**AGRICULTURE DEPARTMENT****Forest Service**

National Environmental Policy Act; implementation; comments due by 10-15-07; published 8-16-07 [FR E7-15867]

**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

Americans with Disabilities Act; implementation:  
Accessibility guidelines—  
Outdoor developed areas; comments due by 10-18-07; published 6-20-07 [FR 07-02979]

**COMMERCE DEPARTMENT  
National Oceanic and Atmospheric Administration**

Fishery conservation and management:  
Alaska; fisheries of Exclusive Economic Zone—  
Bering Sea and Aleutian Islands groundfish; comments due by 10-19-07; published 9-19-07 [FR E7-18489]  
Bering Sea and Aleutian Islands Pacific cod; comments due by 10-17-07; published 10-5-07 [FR 07-04955]  
Pacific cod; comments due by 10-17-07; published 10-5-07 [FR 07-04956]

Northeastern United States fisheries—

Summer flounder; comments due by 10-15-07; published 9-28-07 [FR E7-19133]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; correction; comments due by 10-18-07; published 9-18-07 [FR E7-18364]

Salmon; comments due by 10-16-07; published 10-1-07 [FR E7-19374]

Salmon; comments due by 10-16-07; published 10-1-07 [FR E7-19368]

Salmon; comments due by 10-16-07; published 10-1-07 [FR E7-19358]

**DEFENSE DEPARTMENT  
Defense Acquisition Regulations System**

Acquisition regulations:

Wide Area WorkFlow-Receipt and Acceptance electronic system; mandatory use; comments due by 10-15-07; published 8-14-07 [FR E7-15928]

**DEFENSE DEPARTMENT**

Civilian health and medical program of the uniformed services (CHAMPUS):

TRICARE program—  
Outpatient hospital prospective payment system; comments due by 10-15-07; published 8-14-07 [FR E7-15924]

Federal Acquisition Regulation (FAR):

Accepting and dispensing of \$1 coin; comments due by 10-16-07; published 8-17-07 [FR 07-03803]

Combating trafficking in persons; comments due by 10-16-07; published 8-17-07 [FR 07-03796]

Free trade agreements—  
Bulgaria, Dominican Republic, and Romania; comments due by 10-16-07; published 8-17-07 [FR 07-03799]

Online Representations and Certifications Application Review; comments due by 10-16-07; published 8-17-07 [FR 07-03800]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:  
Hazardous waste combustors  
Legal analysis; comments due by 10-18-07; published 9-27-07 [FR E7-19097]

Iron and steel foundries; comments due by 10-17-07; published 9-17-07 [FR E7-17972]

Paint stripping and miscellaneous surface coating operations; comments due by 10-17-07; published 9-17-07 [FR E7-17973]

Air pollution control; new motor vehicles and engines:  
Nonroad diesel engines; emission standards; technical amendments and Tier 3 technical relief provision; comments due by 10-18-07; published 9-18-07 [FR E7-18163]

Air quality implementation plans; approval and promulgation; various States:  
California; comments due by 10-17-07; published 9-17-07 [FR E7-18064]

Indiana; comments due by 10-15-07; published 9-13-07 [FR E7-17881]

Kentucky; comments due by 10-15-07; published 9-13-07 [FR E7-17628]

Missouri; comments due by 10-17-07; published 9-17-07 [FR E7-18263]

Pennsylvania; comments due by 10-15-07; published 9-13-07 [FR E7-18057]

West Virginia; comments due by 10-15-07; published 9-13-07 [FR E7-17876]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Cis-isomer of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride; comments due by 10-15-07; published 8-15-07 [FR E7-16055]

Commodity vocabulary data base; nomenclature changes; technical amendment; comments due by 10-18-07; published 9-18-07 [FR E7-18159]

Lambda-cyhalothrin; comments due by 10-15-07; published 8-15-07 [FR E7-16050]

Pyrasulfotole; comments due by 10-15-07; published 8-15-07 [FR E7-15698]

Zucchini yellow mosaic virus-weak strain; comments due by 10-15-07; published 8-15-07 [FR E7-16057]

Toxic substances:

Significant new uses—  
Dodecandioic acid, 1, 12-dihydrazide, etc.; comments due by 10-19-07; published 9-19-07 [FR E7-18502]

**FEDERAL COMMUNICATIONS COMMISSION**

Radio broadcasting:

Digital audio broadcasting systems; limitations on subscription-based radio services; comments due by 10-15-07; published 8-15-07 [FR 07-03958]

Radio frequency devices:

57-64 GHz band; unlicensed devices; comments due by 10-17-07; published 7-19-07 [FR E7-13832]

Unlicensed devices and equipment approval; comments due by 10-15-07; published 8-1-07 [FR E7-14930]

Radio stations; table of assignments:  
Illinois; comments due by 10-15-07; published 9-13-07 [FR E7-17866]

#### GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Accepting and dispensing of \$1 coin; comments due by 10-16-07; published 8-17-07 [FR 07-03803]

Combating trafficking in persons; comments due by 10-16-07; published 8-17-07 [FR 07-03796]

Free trade agreements—  
Bulgaria, Dominican Republic, and Romania; comments due by 10-16-07; published 8-17-07 [FR 07-03799]

Online Representations and Certifications Application Review; comments due by 10-16-07; published 8-17-07 [FR 07-03800]

#### HOMELAND SECURITY DEPARTMENT

##### Coast Guard

Drawbridge operations:  
New York; comments due by 10-18-07; published 9-18-07 [FR E7-18302]

#### HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Low-income housing:  
Section 202 Supportive Housing for Elderly and Section 811 Persons with Disabilities Programs—  
Project design and cost standards; comments due by 10-15-07; published 8-15-07 [FR E7-15962]

#### INTERIOR DEPARTMENT

##### Fish and Wildlife Service

Endangered and threatened species:  
Findings on petitions, etc.—  
Goose Creek milk-vetch; comments due by 10-15-07; published 8-16-07 [FR E7-16145]

National Wildlife Refuge System:  
Commercial filming activities or similar projects; fee establishment, etc.; comments due by 10-19-07; published 8-20-07 [FR E7-15845]

#### INTERIOR DEPARTMENT

National Wildlife Refuge System:  
Commercial filming activities or similar projects; fee

establishment, etc.; comments due by 10-19-07; published 8-20-07 [FR E7-15845]

#### INTERIOR DEPARTMENT

##### National Park Service

National Wildlife Refuge System:  
Commercial filming activities or similar projects; fee establishment, etc.; comments due by 10-19-07; published 8-20-07 [FR E7-15845]

#### INTERIOR DEPARTMENT

##### Reclamation Bureau

Use of Bureau of Reclamation land, facilities, and waterbodies; comments due by 10-16-07; published 7-18-07 [FR E7-13847]

#### INTERIOR DEPARTMENT

##### Surface Mining Reclamation and Enforcement Office

Surface coal mining and reclamation operations:  
Permit application packages; comments due by 10-15-07; published 8-14-07 [FR E7-15930]

#### LABOR DEPARTMENT

##### Employee Benefits Security Administration

Employee Retirement Income Security Act:  
Multiemployer pension plans; information availability; comments due by 10-15-07; published 9-14-07 [FR E7-18073]

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Accepting and dispensing of \$1 coin; comments due by 10-16-07; published 8-17-07 [FR 07-03803]

Combating trafficking in persons; comments due by 10-16-07; published 8-17-07 [FR 07-03796]

Free trade agreements—  
Bulgaria, Dominican Republic, and Romania; comments due by 10-16-07; published 8-17-07 [FR 07-03799]

Online Representations and Certifications Application Review; comments due by 10-16-07; published 8-17-07 [FR 07-03800]

#### PERSONNEL MANAGEMENT OFFICE

Employment:  
Disabled veteran documentation; comments due by 10-19-07;

published 8-20-07 [FR E7-16285]

#### SOCIAL SECURITY ADMINISTRATION

Organization and procedures:  
Prescribed applications, forms, and other publications; private printing; comments due by 10-15-07; published 8-16-07 [FR E7-16140]

#### STATE DEPARTMENT

Passports:  
Expedited passport processing; consular services fee schedule; comments due by 10-15-07; published 8-16-07 [FR E7-16173]

#### TRANSPORTATION DEPARTMENT

##### Federal Aviation Administration

Aircraft:  
Non fixed-winged aircraft; nationality and registration marks; comments due by 10-15-07; published 9-14-07 [FR E7-18197]

##### Airports:

Aviation safety inspector; access to air operation areas, secured areas, and security identification areas; comments due by 10-19-07; published 9-19-07 [FR E7-18349]

##### Airworthiness directives:

Airbus; comments due by 10-15-07; published 9-13-07 [FR E7-18046]

Boeing; comments due by 10-15-07; published 8-31-07 [FR E7-17294]

CTRM Aviation Sdn. Bhd.; comments due by 10-15-07; published 9-14-07 [FR E7-18148]

Dassault; comments due by 10-15-07; published 9-13-07 [FR E7-18045]

General Electric; comments due by 10-15-07; published 8-14-07 [FR E7-15701]

McDonnell Douglas; comments due by 10-15-07; published 8-31-07 [FR E7-17287]

Saab; comments due by 10-19-07; published 9-19-07 [FR E7-18478]

Class E airspace; comments due by 10-15-07; published 8-29-07 [FR E7-17068]

Restricted areas; comments due by 10-15-07; published 8-31-07 [FR E7-17361]

#### TRANSPORTATION DEPARTMENT

##### National Highway Traffic Safety Administration

Insurer reporting requirements:

Insurers required to file reports; list; comments due by 10-15-07; published 8-30-07 [FR E7-17149]

#### TREASURY DEPARTMENT

##### Internal Revenue Service

Income taxes:  
Qualified zone academy bonds; obligations of States and political subdivisions; cross reference; comments due by 10-15-07; published 7-16-07 [FR E7-13663]

Procedure and administration:  
Nonjudicial foreclosure sale and parties making administrative requests for return of wrongfully levied property; notification changes; comments due by 10-18-07; published 7-20-07 [FR E7-14051]

#### LIST OF PUBLIC LAWS

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##### H.R. 3668/P.L. 110-90

TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Sept. 29, 2007; 121 Stat. 984)

##### H.J. Res. 43/P.L. 110-91

Increasing the statutory limit on the public debt. (Sept. 29, 2007; 121 Stat. 988)

##### H.J. Res. 52/P.L. 110-92

Making continuing appropriations for the fiscal year 2008, and for other purposes. (Sept. 29, 2007; 121 Stat. 989)

##### H.R. 3625/P.L. 110-93

To make permanent the waiver authority of the

Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency. (Sept. 30, 2007; 121 Stat. 999)

Last List October 2, 2007

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