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Contents

Federal Register

Vol. 73, No. 19

Tuesday, January 29, 2008

African Development Foundation
NOTICES
Meetings; Sunshine Act, 5154

Agricultural Marketing Service
PROPOSED RULES
Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, 5130–5132

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Rural Business-Cooperative Service
See Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5154–5156
Submission for OMB Review; Comment Request, 5154–5155

Animal and Plant Health Inspection Service
RULES
Interstate Movement of Regulated Nursery Stock From Quarantined Areas:
  Citrus Canker, 5085
Removal of Quarantined Area:
  Mexican Fruit Fly, 5086–5087
PROPOSED RULES
Importation of Cattle from Mexico:
  Addition of Port at San Luis, AZ, 5132–5135
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5156–5157

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5195–5197
Meetings:
  Advisory Committee on Immunization Practices, 5197–5198
  National Institute for Occupational Safety and Health, Safety and Occupational Health Study Section, 5198

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare Program:
  Option for Prescription Drug Plans to Lower Their Premiums for Low-Income Subsidy Beneficiaries; Correction, C8-00015
  Prospective Payment System for Long-Term Care Hospital RY 2009; Proposed Annual Payment Rates Updates, Policy Changes, and Clarifications, 5342–5419

Children and Families Administration
NOTICES
Statement of Organization, Functions, and Delegations of Authority, 5198–5200

Civil Rights Commission
NOTICES
Meetings:
  Florida Advisory Committee, 5174
  Kentucky Advisory Committee, 5174

Coast Guard
RULES
Drawbridge Operating Regulations:
  Gulf Intracoastal Waterway (Algiers Alternate Route), Belle Chasse, LA; Correction, 5090–5091
Drawbridge Operation Regulations:
  Atlantic Intracoastal Waterway, Sunset Beach, NC, 5091–5093
  Isle of Wight Bay (Sinepuxent Bay), Ocean City, Maryland, 5093–5095
Drawbridge operations:
  Illinois; CFR correction, 5095
Potomac and Anacostia Rivers, Washington, DC and Arlington and Fairfax Counties, VA; Security Zone, 5095–5097
NOTICES
Area Maritime Security Committee, South Texas; Vacancies, 5202
Lower Mississippi River Safety Advisory Committee; Vacancies, 5202–5203
Meetings:
  Houston/Galveston Navigation Safety Advisory Committee, 5203–5204

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

Corporation for National and Community Service
NOTICES
Meetings; Sunshine Act, 5178–5179

Disability Employment Policy Office
NOTICES
Solicitation of Nominations for Secretary of Labor's New Freedom Initiative Award, 5212–5214

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5179
Rehabilitation Training:
  Rehabilitation Continuing Education Program, 5179–5182

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Intent to Establish the Electricity Advisory Committee, 5182
Meetings:
  Environmental Management Site-Specific Advisory Board, 5182
  High Energy Physics Advisory Panel, 5182–5183

Environmental Protection Agency
RULES
Acephate, Fenbutatin-Oxide (Hexakis), MCPA, Pyrethrins, and Triallate; Tolerance Actions, 5104–5109

Approval and Promulgation of Air Quality Implementation Plans:
Maine, 5097–5101
Michigan, 5101–5104
Health and Safety Data Reporting:
Addition of Certain Chemicals, 5109–5115
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Maine, 5152–5153
Michigan, 5152

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

Federal Aviation Administration
PROPOSED RULES
Establishment and Removal of Class E Airspace:
Centre, AL, 5135–5136

Federal Deposit Insurance Corporation
NOTICES
Federal Deposit Insurance Act:
Bank and savings and loan holding companies; participation by institution-affiliated parties; policy statement; correction, 5270

Federal Energy Regulatory Commission
PROPOSED RULES
Forms, Statements, and Reporting Requirements for Electric Utilities and Licensees Revisions, 5136–5151
NOTICES
Combined Notice of Filings No. 1, 5183–5184

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5258–5259
Final Federal Agency Actions on a Proposed Highway Project in California, 5259

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers:
Exemption Applications; Vision, 5259–5261

Federal Reserve System
NOTICES
Change in Bank Control Notices:
Acquisition of Shares of Bank or Bank Holding Companies, 5189
Meetings; Sunshine Act, 5189
Proposals to Engage in Permissible Nonbanking Activities or Acquire Co. Engaged in Permissible Nonbanking Activities, 5189–5190

Federal Trade Commission
NOTICES
Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules, 5190–5191
Revised Jurisdictional Thresholds:
Section 7A of the Clayton Act, 5191–5192
Section 8 of the Clayton Act, 5192

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5267

Fish and Wildlife Service
NOTICES
Draft Candidate Conservation Agreement With Survival Permit Enhancement Application and Assurances:
Page Springsnail, Yavapai County, AZ, 5205–5206
Issuance of Permits for Marine Mammals, 5206
Receipt of Applications for Permit, 5206–5207

Foreign-Trade Zones Board
NOTICES
Approval for Expansion of Subzone 107A; Winnebago Industries, Inc., 5175
Approval For Manufacturing Authority; Merck Sharpe & Dohme Quimica de Puerto Rico Inc., 5175
Foreign-Trade Zone 124 — Gramercy, Louisiana; Application for Subzone, 5175–5176

General Services Administration
NOTICES
Locating Federal Facilities in Rural Areas, 5192

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5192–5193
Interest Rates on Overdue Debts, 5193–5194
Meetings:
American Health Information Community Chronic Care Workgroup, 5194
American Health Information Community Confidentiality, Privacy, and Security Workshop, 5194
American Health Information Community Consumer Empowerment Workgroup, 5194–5195
American Health Information Community Electronic Health Records Workgroup, 5195
American Health Information Community Personalized Healthcare Workgroup, 5194
American Health Information Community Population Health and Clinical Care Connections, 5195
American Health Information Community Quality Workgroup, 5195

Homeland Security Department
See Coast Guard
See Transportation Security Administration
RULES
Minimum Standards for Drivers Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 5272–5340

Indian Affairs Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5207–5208

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau

See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Hand Trucks and Certain Parts Thereof from the People's Republic of China:
Extension of Time Limit for the Preliminary Results of New Shipper Review, 5176
Postponement of Final Determination of Antidumping Duty Investigation:
Sodium Hexametaphosphate from the People's Republic of China, 5176–5177

International Trade Commission
NOTICES
Aminotrimethylenephosphonic Acid and 1-Hydroxyethylidene-1,1-Diphosphonic Acid from China and India, 5211
Commission Determination to Conduct Portion of Hearing In Camera, 5211–5212

Labor Department
See Disability Employment Policy Office

Land Management Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5208–5209

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5214

National Highway Traffic Safety Administration
NOTICES
Receipt of Petition for Decision of Inconsequential Noncompliance:
Bridgestone Firestone North American Tire, LLC, 5261–5262
Chrysler, LLC, 5262–5263

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Reef Fish Fishery and Shrimp Fishery of the Gulf of Mexico; Amendment 27/14, 5117–5128
Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska, 5128–5129
Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan, 5115–5117
PROPOSED RULES
Fisheries of the Northeastern United States:
Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures, 5153
NOTICES
Atlantic Bluefin Tuna Scientific Workshop, 5177
Endangered and Threatened Species; Initiation of a Status Review for Shortnose Sturgeon:
Comment Period Extension, 5177–5178
Evaluation of State Coastal Management Programs and National Estuarine Research Reserves, 5178
Fisheries in the Western Pacific:
2008 Harvest Guideline, 5177

National Park Service
NOTICES
Continuation of Visitor Services, 5209–5210
General Management Plan; Chickasaw National Recreation Area, Oklahoma, 5210–5211
General Management Plan, Environmental Impact Statement:
African Burial Ground National Monument, New York, 5210

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5214–5215
Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration, 5215–5235
Meetings:
Independent External Review Panel to Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's Materials Licensing Program, 5235
Nuclear Waste and Materials Advisory Committee, 5235–5236
Meetings; Sunshine Act, 5236
Order Prohibiting Involvement in NRC-Licensed Activities:
Mr. Jon Brumer, 5237–5238
Mr. Oscar Aguilar, 5238–5240

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

Pipeline and Hazardous Materials Safety Administration
NOTICES
Pipeline Safety:
Special Permits Granted, 5263–5264

Postal Service
NOTICES
Implementation of Changes to the Domestic Mail Classification Schedule, 5242–5245

Public Debt Bureau
See Fiscal Service

Rural Business-Cooperative Service
NOTICES
Announcement of Value-Added Producer Grant Application Deadlines, 5157–5167

Rural Housing Service
NOTICES
Request for Proposals:
Farm Labor Housing Technical Assistance Grants, 5167–5174

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5245–5246
Public Company Accounting Oversight Board:
Budget and annual accounting support fee (2008 CY); Correction, 5270
Self-Regulatory Organizations; Proposed Rule Changes:
American Stock Exchange LLC; Correction, 5270
International Securities Exchange, LLC, 5246–5248
NASDAQ Stock Market LLC, 5248–5254
New York Stock Exchange LLC, 5254–5257
New York Stock Exchange LLC; Correction, 5270

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5257
Small Business Size Standards:
Waiver of the Nonmanufacturer Rule, 5257–5258

State Department
RULES
Consular Services Fee Schedule; State Department, Overseas Embassies, and Consulates, 5087–5090

Substance Abuse and Mental Health Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5200–5202

Surface Transportation Board
NOTICES
Arizona Eastern Railway, Inc.-Trackage Rights Exemption-Union Pacific Railroad Co., 5264

Thrift Supervision Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5267–5269

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Acceptance of Competitive Need Limitation Waiver Petitions for 2007 Annual Review, 5240–5242

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Transportation Security Administration
NOTICES
Advance Notice of Availability:
Security Improvement Grants and Application Process, 5204
Transportation Worker Identification Credential:
Enrollment Dates for Ports of Louisville, KY et al., 5204–5205

Treasury Department
See Fiscal Service
See Thrift Supervision Office
NOTICES
Interim Guidance Concerning the Terrorism Risk Insurance Reauthorization Act of 2007, 5264–5267

Western Area Power Administration
NOTICES
Record of Decision and Floodplain Statement of Findings for the Trinity Public Utilities District Direct Interconnection Project, 5184–5189

Separate Parts In This Issue

Part II
Homeland Security Department, 5272–5340

Part III
Health and Human Services Department, Centers for Medicare & Medicaid Services, 5342–5419

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.

6 CFR
37 5272

7 CFR
301 (2 documents) 5085, 5086

Proposed Rules:
905 5130

9 CFR

Proposed Rules:
93 5132

14 CFR

Proposed Rules:
71 5135

18 CFR

Proposed Rules:
41 5136
141 5136

22 CFR
22 5087

33 CFR
117 (4 documents) 5090, 5091, 5093, 5095
165 5095

40 CFR
52 (2 documents) 5097, 5101
180 5104
716 5109

Proposed Rules:
52 (2 documents) 5152

42 CFR

Proposed Rules:
412 5342
422 5270
423 5270

50 CFR
229 5115
622 5117
679 5128

Proposed Rules:
648 5153

Rules and Regulations

Federal Register
Vol. 73, No. 19
Tuesday, January 29, 2008

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0032]

RIN 0579–AC38

Citrus Canker; Interstate Movement of Regulated Nursery Stock From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our interim rule that amended the citrus canker quarantine regulations to explicitly prohibit, with limited exceptions, the interstate movement of regulated nursery stock from a quarantined area. One of those exceptions was a provision that allows calamondin and kumquat plants, two types of citrus plants that have been considered to be highly resistant to citrus canker, to be moved interstate from a quarantined area under a protocol designed to ensure that they are free of citrus canker prior to movement. However, following publication of the interim rule, several samples from calamondin plants growing in a quarantined area were found to be infected with citrus canker. Based on that finding, it appears that it will be necessary to remove calamondin plants from the protocol when we publish an upcoming rule that will finalize the interim rule. Before we publish that final rule, however, we are reopening the comment period for the interim rule to provide interested persons with an opportunity to prepare and submit comments regarding calamondin plants and the interstate movement protocol.

DATES: We will consider all comments that we receive on or before February 28, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0032* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0032, 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–2007–0032.

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.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2007, we published in the **Federal Register** (72 FR 13423–13428; Docket No. APHIS–2007–0032) an interim rule [1] that amended the citrus canker quarantine regulations to explicitly prohibit, with certain limited exceptions, the interstate movement of regulated nursery stock from a quarantined area. The interim rule was effective on March 16, 2007. We took that action because the interstate movement of regulated nursery stock from an area quarantined for citrus canker poses a high risk of spreading citrus canker outside the quarantined area. The interim rule included two exceptions to the prohibition. We continued to allow the interstate movement of regulated nursery stock for immediate export, under certain conditions. We also allowed calamondin and kumquat plants, two types of citrus plants that were considered to have a high degree of biological resistance to citrus canker, to be moved interstate from a quarantined area under a protocol designed to ensure that they are free of citrus canker prior to movement.

In July 2007, officials from our Center for Plant Health Science and Technology (CPHST) confirmed that samples obtained from 15 calamondin plants growing in an area quarantined for citrus canker were infected with the disease. Based on those findings, we now consider it probable that the interstate movement of calamondin plants from a quarantined area, even under the conditions of the protocol, presents a disease risk pathway for the spread of citrus canker. Therefore, we consider it prudent to amend the regulations to remove calamondin plants from the protocol.

We would make that amendment in an upcoming rule that will finalize our March 2007 interim rule. Accordingly, we are reopening the comment period for the interim rule for an additional 30 days. This action will allow interested persons an opportunity to prepare and submit comments regarding calamondin plants and the interstate movement protocol.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, 371.3.

Section 301.75–15 is issued under Sec. 204, Title II, Public Law 106–113, 113. Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 23rd day of January 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–1534 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule, comments we received, and all related documents, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0032.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0129]

Mexican Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing Willacy County, TX, from the list of quarantined areas and thus removing restrictions on the interstate movement of regulated articles from this area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. We have determined that the Mexican fruit fly no longer exists in Willacy County, TX, and that the quarantine and restrictions are no longer necessary.

DATES: This interim rule is effective January 29, 2008. We will consider all comments that we receive on or before March 31, 2008.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0129* to submit or view comments and to view supporting and related materials available electronically.

Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2007–0129, 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–2007–0129.

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: Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas. Willacy County, TX, has been listed as a quarantined area since the Mexican fruit fly regulations were established.

Based on trapping surveys conducted by inspectors of the Texas Department of Agriculture and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from Willacy County. The last finding of Mexican fruit fly in this quarantined area was May 6, 2005.

Since then, no evidence of Mexican fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Mexican fruit fly no longer exists in Willacy County, TX. Therefore, we are amending the regulations in § 301.64–3(c) by removing the entry for this county from the list of quarantined areas.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Willacy County, TX, was quarantined due to the possibility that the Mexican fruit fly could spread from this area to noninfested areas of the United States. Since we have concluded that the Mexican fruit fly no longer exists in Willacy County, immediate action is warranted to remove the quarantine and to relieve the restrictions on the interstate movement of regulated articles from this area. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This action amends the Mexican fruit fly regulations by removing Willacy County, TX, from the list of quarantined areas.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. We expect that any small entities located within the regulated area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. The effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, the lifting of the quarantine is expected to have little effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.64–3 [Amended]

■ 2. In § 301.64–3, paragraph (c) is amended by removing, under the heading ''TEXAS'', the entry for Willacy County.

Done in Washington, DC, this 23rd day of January 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–1531 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 6082]

RIN 1400–AC41

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: The Department of State is revising the Schedule of Fees for Consular Services to reflect an increase in the surcharge related to consular services in support of enhanced border security and a reduction in the execution fee for the passport book. The Secretary of State is authorized to collect the border security surcharge by the Consolidated Appropriations Act, 2005 (Pub. L. 108–447). In 2007, Congress authorized the Secretary of State to administratively amend the surcharge amount in the Department of State Authorities Act of 2006 (Pub. L. 109–472). The Secretary is also authorized to set and collect a fee for executing passport applications by 22 U.S.C. 214.

DATES: *Effective date:* This interim final rule is effective February 1, 2008.

Comment date: The Department of State will accept written comments from interested persons up to March 31, 2008. Comments received before the end of the comment period will be addressed in a final rule.

ADDRESSES: Interested parties may submit comments by any of the following methods. All comments must include the Regulatory Identification Number (RIN) that appears in the heading of this document.

- *E-mail: PassportRules@state.gov*. You must include the Regulatory Identification Number (RIN) in the subject line of your message.
- *Mail:* (paper, disk, or CD–ROM submissions): An original and three copies of comments should be sent to: Christine L. Grauer, Office of Passport Services, Legal Affairs Division, Planning and Advisory Services, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037.
- *Fax:* 202–663–2499. You must include the Regulatory Identification Number (RIN) in the subject line of your message.

Persons with access to the internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm*.

FOR FURTHER INFORMATION CONTACT: For *passport issuance policy:* Susan Bozinko, Division Chief, Office of Passport Services, Legal Affairs Division, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037. Telephone (202) 663–2491. E-mail: *PassportRules@state.gov*. For *consular fee setting policy:* Tracy Henderson, Director of the Budget, Bureau of Consular Affairs, U.S. Department of State, Suite H1004, 2401 E St., NW., Washington, DC 20520, telephone (202) 663–2525 or by e-mail: *fees@state.gov*.

SUPPLEMENTARY INFORMATION:

Amendment to the Schedule of Fees for Consular Services

As discussed below, this change in the schedule of fees will reflect the proposed passport book surcharge increase, as well as a reduction in the execution fee for the passport book.

Amendment to Passport Book Fees

Border Security Surcharge

Due to increased security concerns following the events of September 11th, the Department of State has focused upon improved security, particularly in relation to our nation's borders. In 2004, Congress authorized the Secretary of State to collect a surcharge related to consular services in support of enhanced border security. (Pub. L. 108–447, Div. B, Title IV, 118 Stat. 2896 (2004), 8 U.S.C. 1714). The law set the initial border security surcharge at $12.00 because that was the estimated cost of providing consular services in support of enhanced border security at that time.

In 2007, Congress provided the Secretary of State with the authority to administratively amend the border security surcharge. Department of State Authorities Act of 2006, Public Law 109–472, section 6, 120 Stat. 3554 (2007) (codified at 8 U.S.C. 1714 note). Congress included four requirements for such amendments:

(1) The amounts of the surcharges shall be reasonably related to the costs of providing services in connection with the activity or item for which the surcharges are charged.

(2) The aggregate amount of surcharges collected may not exceed the aggregate amount obligated and expended for the costs related to consular services in support of enhanced border security incurred in connection with the activity or item for which the surcharges are charged.

(3) A surcharge may not be collected except to the extent the surcharge will be obligated and expended to pay the costs related to consular services in support of enhanced border security incurred in connection with the activity or item for which the surcharge is charged.

(4) A surcharge shall be available for obligation and expenditure only to pay the costs related to consular services in support of enhanced border security incurred in providing services in connection with the activity or item for which the surcharge is charged.

The proposed $8.00 increase in the surcharge falls within the above parameters set by Congress.

The $8.00 increase is reasonably related to the costs of providing consular services in support of enhanced border security because it represents the cost of providing passport books with upgraded security features resulting from the State Department's enhanced border security programs implemented since 2005. New passport book security measures, including the introduction of an electronic passport and the use of traceable priority mail delivery to applicants to prevent passport loss or theft, have increased the

security-related passport costs and $12.00 is no longer sufficient to cover such costs.

First, due to these new security measures, the passport book and mailing now costs the Department $19.40. Each passport book costs $14.80, nearly triple the previous cost, and priority mail costs $4.60 as opposed to the original 60-cent standard first-class mail rate, for a total cost of $19.40. In order to avoid a loss, the Department is rounding up the security surcharge to $20. Thus, the Department is raising the security surcharge by a total of $8.00 at the present time.

Even taking this rounding into account, the total amount of the surcharge collected will not exceed the aggregate amount obligated and expended for costs related to consular services in support of enhanced border security incurred in connection with passport services, nor will it exceed the total amount obligated and expended for passport books and mailing. When the Department initially began collecting the security surcharge in March 2005, the amounts collected were more than sufficient to fund costs. Nevertheless, each fiscal year, the Department expended the majority of its passport book security surcharge collections, leaving only a minimal amount to carry over into the new fiscal year for operating expenses on October 1.[1] Because of the substantial increase in costs caused by the introduction of the electronic passport book and the use of priority mailing, these costs now significantly exceed the amounts collected through the security surcharge. Thus, the amounts now collected through the security surcharge do not fully cover the costs for passport books and secure mail and other consular fees are used to fund the full cost of the passport book and priority mailing. This demonstrates the necessity of raising the passport book security surcharge at this time.

Third, the surcharge is only collected to the extent that it is obligated and expended to pay the costs associated with enhanced border security. These funds are maintained in a separate account—''Passport Security Surcharge''—and are used only for consular functions supporting enhanced border security.

Fourth, all of the surcharge funds are obligated and expended only to pay costs related to consular services in support of enhanced border security. As stated above, the Department has established a separate account for monies collected through the border security surcharge and ensures, and will continue to ensure, that such monies are expended only to pay the related border security enhancement costs. The financial plan for the Border Security Program exclusively uses the revenue received through the passport book security surcharge to pay for the production and mailing costs of the new electronic passport books. The passport book security surcharge is not used to support any other activities.

It is important that the Department of State increase the security surcharge by $8.00 to $20.00. The Department of State considers the enactment of this rule a matter of the utmost importance to ensure the availability of funds necessary to support consular services related to enhanced border security throughout our nation.

Execution Fee

The Department is also reducing the execution fee for the passport book from $30.00 to $25.00, as proposed in its Notice of Proposed Rulemaking (NPRM) published on October 17, 2006 at 71 FR 60928. As the Department explained in the NPRM, the $25.00 execution fee for passport applications is based on an internal review of the Department's cost of service, along with information from the United States Postal Service. The $25.00 execution fee has already been implemented for the passport card through the Passport Card Rule published on December 31, 2007. This rule completes the transition to the $25.00 execution fee for passport card and passport book applications by applying the lower fee for the passport book.

The passport book security surcharge and reduction of the execution fee will take effect at the same time the new passport card fees become effective so that the Department can administratively implement all passport fee changes at the same time.

The new fees for the passport book are as follows:

	Current fees	New fees
Passport Book Services:		
(a) Application fee for applicants age 16 or over (including renewals) [Adult Passport Book]	$55	$55
(b) Application fee for applicants under age 16 [Minor Passport Book]	40	40
(c) Passport Book execution fee (required for first time applicants and others who must apply in person)	30	25
(d) Passport Book Security Surcharge (enhanced border security fee)	12	20
Total First Time—Adult	97	100
Total ''Renewal''—Adult	67	75
Total Child	82	85

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as an interim final rule, with a 60-day provision for post-promulgation comments and with an effective date less than 30 days from the date of publication, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Delaying implementation of this rule would be contrary to the public interest because the rule is necessary in order to continue to fund consular services in support of enhanced border security. This rule constitutes an integral component of several changes to the Department's regulations taking place between January 1 and February 1, 2008 as part of the Department's plans to increase border security in several key areas. Failure to increase the border security surcharge on February 1 would jeopardize the Department's ability to fund consular services in support of enhanced border security, and would undermine the integrated implementation of other security-related initiatives designed to go into effect during the same time period. Moreover,

[1] Since these funds are designated as no-year funds which do not expire at the end of a fiscal year, they may be used in the following year, but only to the extent that they are expended to cover enhanced border security costs.

delaying implementation of the $25.00 execution fee for the passport book until after February 1 would create a disparity between the fee charged for the same service for the passport book and the passport card.

Regulatory Flexibility Act/Executive Order 13272: Small Business

The Department of State, in accordance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) and Executive Order 13272, section 3(b), has evaluated the effects of this proposed action on small entities. The Department has determined and hereby certifies that this rule would not have a significant impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule does not result in any expenditure by State, local or tribal governments, nor will it significantly or uniquely affect small governments. The effects on the private sector are discussed below in connection with the economic analysis required under Executive Order 12866.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by 5 U.S.C. 804 for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. A copy of the rule, along with a concise general statement relating to the rule and its effective date, are being provided to each House of Congress and the Comptroller General as required by 5 U.S.C. 801. Pursuant to 5 U.S.C. 808, this interim final rule will take effect on February 1, 2008.

Executive Order 12866: Regulatory Review

This rule is considered by the Department of State to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The surcharge increase is based on the Department's costs and projected volumes that were available at the time this rule was drafted, and the rule has been reviewed by the Office of Management and Budget.

The implementation of this rule will result in a net increase of $3.00 per application in the cost of a passport book when execution of the passport book application is required. For those renewal applications that do not require execution it will result in an $8 increase. Although the economic impact of the rule on any given individual will be relatively minor, it will provide the Department with an additional $232 million in FY 2008 in annual fee revenue, based on a projected annual volume of 29 million applications for passport books, over the fee revenue that would be collected through the current security surcharge. This increase in revenue will be used to fund consular services in support of enhanced border security, as required by 8 U.S.C. 1714 note. The increased revenue will be used for the purchase of blank passport books and priority mailing for completed passport books. If the Department does not adjust the security surcharge to recover the cost of the books and priority mailing, its ability to fund these and other consular services in support of enhanced border security will be compromised, and the Department will be forced to continue to divert funds from other consular fees in order to meet the shortfall. This diversion, in turn, will undermine the Department's ability to deliver the high-quality consular services the public has come to rely on from it.

The Department is concerned with the impact on individual applicants of any rise in the overall cost of the passport book, and carefully analyzed whether it would be possible to keep the security surcharge below the Department's actual cost for passport book purchasing and mailing. It determined, however, that a fee amount that did not meet these costs was not possible given the amount of funding required for the Department's consular services in support of enhanced border security. Although this rule will cause a modest increase in the total cost of a passport book for the individual applicant, the increased cost of the passport book over its 10-year lifetime will be minimal. An increase of $3.00 or, for renewals, $8.00, in the cost of a passport book with a validity period of 10 years corresponds to an increased cost of either thirty cents or eighty cents per year for the life of the passport book. The Department does not anticipate that this *de minimis* increase in the lifetime cost of a passport book will impose an undue burden on individual passport book applicants, or that it will have an impact on application volumes or any other public behavior. Public demand for the passport book has been rising over the past several years and is expected to continue to rise as individuals increasingly come to regard the passport book as a valuable identity document.

This rule will also provide distinct benefits that cannot be quantified monetarily. As OMB Circular A–4 states, ''It will not always be possible to express in monetary units all of the important benefits and costs'' of a rule. A vital, non-quantifiable benefit of this interim final rule is that it will enable the Department to advance its goal of enhancing border security while simultaneously investing in infrastructure and other developments needed to meet projected levels of passport book demand in FY 2008 and beyond. By supplying the funds to purchase passport books and priority mailing, the security surcharge will significantly enhance the nation's border security.

The passport book costs three times the previous passport book for a reason. It is one the world's most secure travel documents. It contains an embedded chip with coding that will prevent digital data from being altered or removed, as well as a unique ID number for the chip. In addition, the electronic passport book uses a form of Public Key Infrastructure (PKI) that will permit digital signatures, thus protecting the data from tampering. These features make it much more difficult for individuals to engage in the fraudulent use of an electronic passport book. Likewise, the use of priority mail makes it possible for both the Department and the legitimate recipient to track the electronic passport book through the mailing process, making it easier to prevent and detect any loss or theft of the book.

At the same time, because it will fully fund the cost of blank passport books and priority mailing, the increased surcharge will permit the Department to maximize the efficiency of its operations. As OMB Circular A–4 explains, ''[a] regulation may be appropriate when you have a clearly identified measure that can make government operate more efficiently.'' By ensuring that the base cost of each passport book and priority mailing is funded through the surcharge, the rule allows the Department to more effectively plan for what is projected to be a record level of passport book demand, and to determine in advance how to best allocate the Department's other available resources so as to provide efficient and high-quality consular services to the American public. Specifically, the rule will permit the Department to use other funds to

provide the infrastructure and staffing needed to meet the projected demand for passport books over the next fiscal year and beyond. This will enable both the Department and the public to avoid the inefficient use of resources that arises when infrastructure and staffing are insufficient to meet demand. This, along with enhanced border security through the use of the passport book and priority mailing, is a tangible and noticeable benefit. Thus, the benefits of this rule exceed its costs.

Executive Order 13132: Federalism

This regulation would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and Executive Order No. 13132 is therefore not applicable.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and to reduce burden.

National Environmental Policy Act

The Department has analyzed this regulation for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment.

The Paperwork Reduction Act of 1995

This proposed rule would not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 22

Passports and visas.

■ Accordingly, for the reasons set forth above, 22 CFR part 22 is amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

■ 1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Pub. L. No. 108–447, 118 Stat. 2809 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570, Pub. L. 109–167, January 10, 2006, 119 Stat. 3578; Pub. L. 109–472, section 6, 120 Stat. 3554 (2007).

■ 2. Section 22.1 is amended in the table by revising entries 1 and 2 under the heading ''Passport and Citizenship Services'' to read as follows:

§ 22.1 Schedule of fees.

The following table sets forth the U.S. Department of State's Schedule of Fees for Consular Services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
1. Passport Book Execution: Required for first-time applicants and others who must apply in person [01—Passport Book Execution]	$25.
2. Passport Book Application Services for:	
(a) Applicants age 16 or over (including renewals) [02—Adult Passport Book]	$55.
(b) Applicants under age 16 [03—Minor Passport Book]	$40.
(c) Passport Book amendments (extension of validity, name change, etc.) 04—Amendment]	No fee.
(d) Passport Book security surcharge (enhanced border security fee) [05—Security Surcharge]	$20.

* * * * *

Dated: January 22, 2008.

Maura Harty,

Assistant Secretary of State for Consular Affairs, Department of State.

[FR Doc. E8–1343 Filed 1–28–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[[USCG–2007–0176] Formerly Published as [CGD08–07–042]]

RIN 1625–AA09

Drawbridge Operating Regulation; Gulf Intracoastal Waterway (Algiers Alternate Route), Belle Chasse, LA; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule, Correction.

SUMMARY: The Coast Guard published in the **Federal Register** of December 12, 2007, a final rule concerning changes to the operation for the State Route 23 vertical lift bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana. The document was inadvertently published under the same docket number as a previously published document. This document establishes the assignment of a new docket number for publication of the final rule.

DATES: This rule is effective on December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, telephone number 504–671–2128.

SUPPLEMENTARY INFORMATION: The Coast Guard published in the **Federal Register** of December 12, 2007, a document which changed the operation of the State Route 23 vertical lift bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana. The document outlined that the portion of the existing regulation allowing the bridge to remain closed to navigation on the last weekend in October was no longer necessary and was being removed from the operating schedule. This document shared a docket number with a separate document that had been published previously. This correction establishes a new docket number for the document published on December 12, 2007.

In rule FR Doc. CGD08–07–042 published on December 12, 2007, (72 FR 298) make the following correction. On page 70515, in the first column, in the heading section replace the docket number CGD08–07–042 with USCG–2007–0176.

Dated: January 8, 2008.

J.H. Korn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. E8–1519 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–07–026]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Sunset Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operating regulations that govern the S.R. 1172 Bridge, at AIWW mile 337.9, Sunset Beach, NC. This final rule will allow the bridge to open on the hour on signal for pleasure vessels from 7 a.m. to 9 p.m. year round. The reason for this change would be to improve the schedule for both roadway and waterway users.

DATES: This rule is effective February 28, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–07–026 and are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 8, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Sunset Beach, NC'' in the **Federal Register** (72 FR 26038). We received 10 comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The S.R. 1172 Bridge at Sunset Beach has zero vertical clearance to vessels when in the closed position at mean high water.

The North Carolina Department of Transportation (NCDOT) owns and operates this single-lane, floating steel-barge, swing-span referred to as a pontoon drawbridge. Current regulations set out at 33 CFR 117.821(a)(5) require the bridge to open on signal for commercial vessels at all times; and on the hour on signal for pleasure vessels between 7 a.m. and 7 p.m., April 1 to November 30, except that on Saturdays, Sundays, and Federal holidays, from June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 9 p.m.

NCDOT and the residents of the Town of Sunset Beach requested a change to the operating regulations for the S.R. 1172 Bridge in an effort to improve the schedule for both roadway and waterway users. The S.R. 1172 Bridge provides the only route on and off Sunset Beach Island. This rule will not change the requirement for the bridge to open on signal at any time for commercial vessels.

The Coast Guard reviewed the bridge logs for 2005 and 2006 provided by NCDOT which illustrate a small decrease in the numbers of vessels passing through the bridge during the spring, summer, and fall over the past year. Most vessels transiting the area in the spring and fall are operated by owners commonly referred to as ''snowbirds''. Owners of these transitory recreational vessels are either traveling north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring which can result in frequent bridge openings due to increased vessel numbers. During the spring and fall months, the flow of recreational vessels is constant.

There were approximately 10,461 and 11,429 vessel passages occurring in 2006 and 2005, respectively, over an eight-month period (during the peak boating season from April to November) according to records furnished by the NCDOT. (See Table A)

TABLE A

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
BRIDGE OPENINGS FOR 2006											
233	191	307	392	436	394	451	392	349	386	326	317
BOAT PASSAGES FOR 2006											
273	157	463	1207	1659	1538	1486	1024	921	1234	1392	481
BRIDGE OPENINGS FOR 2005											
218	165	313	322	441	439	474	413	327	393	331	297
BOAT PASSAGES FOR 2005											
294	211	532	1041	1767	1438	1639	1152	834	1302	2256	538

The final rule will facilitate pleasure vessels in navigating the AIWW, while also helping to ease vehicular traffic congestion.

Discussion of Comments and Changes

The Coast Guard received 10 comments to the NPRM published on May 8, 2007 (72 FR 26038). The comments included nine letters from homeowners and one written request from the North Carolina Department of Environment and Natural Resources, Division of Coastal Management (NCDCM).

Of the nine comments received from homeowners, eight favored the proposal

to allow the bridge to open on the hour on signal for pleasure vessels from 7 a.m. to 9 p.m. year round. The remaining comment opposed the proposal. However, that comment inaccurately concluded that the proposal would change the opening schedule to ''on demand'' for pleasure vessels. This rule will not create an ''on demand'' schedule, therefore we do not consider this comment to oppose the NPRM or this final rule.

The last comment from NCDCM contained a request that the NPRM be subject to a consistency review under the Coastal Zone Management Act. The Coast Guard response is included in the ''Environment'' section below.

Based on all of the comments received, we are publishing this final rule with no changes from the NPRM. Under this final rule, the draw of the S.R. 1172 Bridge will open on signal at all times for commercial vessels and on the hour on signal between 7 a.m. and 9 p.m., year-round for pleasure vessels. At all other times, the draw shall open on demand.

Discussion of Rule

The Coast Guard is amending 33 CFR 117.821, by revising paragraph (a)(5) for pleasure vessels to read ''shall open on the hour on signal from 7 a.m. to 9 p.m.'' What this means is that the bridge shall only open on the hour, but that it may remain closed on certain hours if no one has requested an opening for that hour.

Regulatory Evaluation

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

In accordance with 15 CFR part 930.35(a)(1) Negative determinations of proposed activities, we based this action on careful review of the waterway use, historical reports, and dated records seeking past impacts on coastal and natural resources around the bridge and within the surrounding areas.

Small Entities

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

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

This conclusion is based on the fact that the changes will have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32) (e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

The Coast Guard has determined that changing the operating schedule for the SR 1172 Bridge will not have any foreseeable effect on any coastal uses or natural resources within the coastal zone of the State of North Carolina.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.821, paragraph (a)(5) is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

* * * * *

(a) * * *

(5) S.R. 1172 Bridge, mile 337.9, at Sunset Beach, NC, shall open on the hour on signal between 7 a.m. to 9 p.m.

* * * * *

Dated: December 18, 2007.

Fred M. Rosa, Jr.,

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

[FR Doc. E8–1476 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2007–0065 [previously published as CGD05–07–100]]

RIN 1625–AA09

Drawbridge Operation Regulations: Isle of Wight Bay (Sinepuxent Bay), Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Final temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulations that govern the operation of the U.S. 50 Bridge across the Isle of Wight Bay (Sinepuxent Bay), at mile 0.5, in Ocean City, MD. This closure is necessary to facilitate extensive rehabilitation and to maintain the bridge's operational integrity. Vessels that can pass under the bridge without a bridge opening may do so at all times.

DATES: This rule is effective from 8 a.m. on Monday, January 7, 2008 until and including 5 p.m. on Thursday, February 21, 2008.

ADDRESSES: Comments and related materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2007–0065. The docket is available at *http://www.regulations.gov* and will include any personal information you have provided.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Sandra S. Elliott, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6557. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 1, 2007, the new Federal Docket Management System (FDMS) was established and FDMS numbers were assigned to all actions published in the **Federal Register**. New FDMS numbers are posted and requested comments are reviewed at www.regulations.gov. The FDMS number assigned to this rule is USCG–2007–0065.

On November 8, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations: Isle of Wight Bay (Sinepuxent Bay), Ocean City, Maryland'' in the **Federal Register** (72 FR 63156). The previously assigned NPRM docket number was CGD05–07–100. We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge repairs, scheduled to begin on January 7, 2008, are necessary repairs that must be performed with all due speed to assure the continued safe and reliable operation of the bridge. Any delay in making this rule effective would not be in the best interest of public safety and the marine interests that use Isle of Wight Bay (Sinepuxent Bay). We received no comments on the published NPRM, which included the effective period, indicating a need to delay the effective date of this temporary final rule.

Background and Purpose

Maryland Department of Transportation-State Highway Administration (MDOT) owns and operates the bascule span of the U.S. 50 Bridge, at mile 0.5, across Isle of Wight Bay (Sinepuxent Bay) in Ocean City, MD. The bridge has a vertical clearance in the closed position to vessels of 13 feet, above mean high water (vertical clearance at center of channel increased by five feet). The current regulations are outlined at 33 CFR 117.559, which require the bridge to open on signal except: From October 1 through April 30 from 6 p.m. to 6 a.m., the draw shall open if at least three hours notice is given and from May 25 through September 15 from 9:25 a.m. to 9:55 p.m., the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to let accumulated vessels pass, except that, on Saturdays from 1 p.m. to 5 p.m., the draw shall open on the hour for all waiting vessels and shall remain in the open position until all waiting vessels pass.

The Office of Bridge Inspection and Remedial Engineering, a division under MDOT, requested a change to the existing operating drawbridge regulations to accommodate the necessary repairs. The repairs include replacing the existing north and south pinion/bull gear sets in the west bascule leaf and replacing the existing grid deck in the bascule span. To facilitate the repairs, the drawbridge will be locked in the closed-to-navigation position from 8 a.m. on Monday, January 7, 2008 until

and including 5 p.m. on Thursday, February 21, 2008.

Information provided by MDOT indicates that during the winter months, in January and February, the bridge has an opening frequency of five openings per month. Vessel operators with mast height lower than 13 feet still can transit through the drawbridge across Isle of Wight Bay (Sinepuxent Bay) during the rehabilitation. The project will also require a small barge, measuring 8 feet by 27 feet, for the gear removal/grid deck installation. The barge will only be needed for a six-day period and removed at the end of each procedure at the end of each day. However, the barge can be removed during an emergency at any time. Also, the Atlantic Ocean is an alternate route for vessels with a mast height greater than 13 feet. Therefore, vessels should not be negatively impacted by this temporary change.

Discussion of Comments and Changes

The Coast Guard received no comments to the NPRM. Based on the information provided, we will implement a final temporary rule with no changes to the NPRM.

Discussion of Rule

The Coast Guard is suspending the operating regulations at 33 CFR 117.559 for the U.S. 50 Bridge at mile 0.5, in Ocean City, Maryland from 8 a.m. on January 7, 2008, through 5 p.m. on February 21, 2008. During this suspension period, the Coast Guard will implement temporary operating regulations for this bridge. The final temporary rule states that the bridge need not be opened by the bridge operator, Maryland Department of Transportation-State Highway Administration, during this period.

Regulatory Evaluation

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

Due to the historical average number of bridge openings during this time period, this temporary change will have only a minimal impact on maritime traffic seeking to transit the bridge. Vessel operators with mast height lower than 13 feet still can transit through the drawbridge across Isle of Wight Bay (Sinepuxent Bay) during the rehabilitation. Also, the Atlantic Ocean is an alternate route for vessels with a mast height greater than 13 feet who cannot transit under the bridge during this period.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: Owners and operators of vessels with over 13 feet of mast height seeking to transit the bridge between 8 a.m. on January 7, 2008, through 5 p.m. on February 21, 2008. This rule will not have a significant economic impact on a substantial number of small entities because vessel operators with mast height lower than 13 feet still can transit thorough the drawbridge. The Atlantic Ocean is an alternate route for vessels with a mast height greater than 13 feet.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction because this rule involves drawbridge regulations. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Words of Issuance and Regulatory Text

■ For the reasons discussed in the preamble, the Coast Guard temporarily amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8 a.m. on January 7, 2008 through 5 p.m. on February 21, 2008, temporarily designate the regulatory text in § 117.559 as paragraph (a), temporarily suspend newly designated paragraph (a), and temporarily add paragraph (b) to read as follows:

§ 117.559 Isle of Wight Bay.

* * * * *

(b) From 8 a.m. on January 7, 2008 through 5 p.m. on February 21, 2008, the draw of the U.S. 50 Bridge, mile 0.5, at Ocean City, need not be opened.

Dated: 16 January 2008.

Fred M. Rosa, Jr.,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E8–1567 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Drawbridge Operation Regulations

CFR Correction

In Title 33 of the Code of Federal Regulations, Parts 1 to 124, revised as of July 1, 2007, in part 117, under ILLINOIS, on page 587, reinstate § 117.397 to read as follows:

§ 117.397 Wabash River.

The draws of each bridge across the Wabash River shall open on signal if at least 72 hours notice is given.

[FR Doc. 08–55502 Filed 1–28–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2008–0005]

RIN 1625–AA87

Security Zone; Potomac and Anacostia Rivers, Washington, DC and Arlington and Fairfax Counties, VA

AGENCY: Coast Guard, DHS

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone, encompassing certain waters of the Potomac River and Anacostia River, for the 2008 State of the Union Address. This action is necessary to safeguard the public and high-ranking public officials from terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 8 a.m. on January 28, 2008, through 8 a.m. on January 29, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0005 and are available online at *www.regulations.gov*. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald L. Houck, Waterways Management Division, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. It would be contrary to public interest to delay the effective date of this rule.

The Department of Homeland Security designated the 2008 State of the Union Address a National Special Security Event (NSSE). The Coast Guard is establishing this security zone to support the United States Secret Service, the designated lead federal agency for an NSSE, in their efforts to coordinate security operations and establish a secure environment for this highly visible and publicized event.

The measures contemplated by the rule are intended to protect the public and high-ranking public officials by preventing waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S.

ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awarness that future terrorist attacks are possible, the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a gathering of high-ranking United States officials at or near the U.S. Capitol Building would have. This temporary security zone of 24-hour duration is necessary to provide for the security of high-ranking United States officials and the public at large.

Discussion of the Rule

The 2008 State of the Union Address is scheduled for the evening of January 28 in Washington, D.C. This temporary security zone applies to all waters of the Potomac River, from the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin. This rule is effective from 8 a.m. on January 28, 2008, through 8 a.m. on January 29, 2008.

Vessels underway at the time this security zone is implemented must immediately proceed out of the zone. We will issue written and broadcast Notices to Mariners to further publicize the security zone and any revisions to the zone.

Except for Public vessels and vessels at berth, mooring or at anchor, this rule temporarily requires all vessels in the designated security zone as defined by this rule to depart the security zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. There is little seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners of operators of vessels intending to operate, transit or anchor on the Potomac River, from the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin, from 8 a.m. on January 28, 2008 through 8 a.m. on January 29, 2008. This security zone will not have a significant economic impact on a substantial number of small entities due to a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Also, vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a security zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add temporary § 165.T05–001 to read as follows:

§ 165.T05–001 Security Zone; Potomac and Anacostia Rivers, Washington, DC and Arlington and Fairfax Counties, VA

(a) *Definitions.* For the purposes of this section, *designated representative* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland, and any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to act as a designated representative on his behalf.

(b) *Location.* The following area is a security zone: All waters of the Potomac river, from shoreline to shoreline, bounded by the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, and all waters of the Anacostia River, from shoreline to shoreline, downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin.

(c) *Regulations.* (1) The general regulations governing security zones found in § 165.33 of this part apply to the security zone described in paragraph (b) of this section.

(2) Entry into this zone is prohibited unless authorized by the Captain of the Port Baltimore or his designated representative. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone must depart the security zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 8 a.m. on January 28, 2008, through 8 a.m. on January 29, 2008.

Dated: January 10, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 08–387 Filed 1–24–08; 4:42 pm]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2007–0963; A–1–FRL–8522–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Ozone Maintenance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine, that includes four separate 8-hour ozone maintenance plans. The Clean Air Act requires that areas that are designated attainment for the 8-hour ozone standard, and also had been previously designated either nonattainment or maintenance for the 1-hour ozone standard, develop a plan showing how the state will maintain the ozone standard for the area. Maine's maintenance plans include an emissions inventory, a plan for how the state will demonstrate and track progress of continued maintenance of the standard, a commitment to continue ozone monitoring, and a contingency plan that

will ensure that any violation of the 8-hour ozone standard is promptly addressed. The intended effect of this action is to approve these four maintenance plans into the Maine SIP. This action is being taken under the Clean Air Act.

DATES: This direct final rule will be effective March 31, 2008, unless EPA receives adverse comments by February 28, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2007–0963 by one of the following methods:

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

2. *E-mail: arnold.anne@epa.gov*

3. *Fax:* (617) 918–0047. Mail: ''Docket Identification Number EPA–R01–OAR–2007–0963,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

4. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2007–0963. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov*, or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Action Is EPA Taking?
II. What Is a Section 110(a)(1) Maintenance Plan?
III. How Has Maine Addressed the Components of a Section 110(a)(1) 8-Hour Ozone Maintenance Plan?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on August 7, 2006. The SIP revision consists of the Clean Air Act (CAA or Act) Section 110(a)(1) 8-hour ozone maintenance plans for four areas in Maine. Maine held a public hearing on the proposed SIP revision on July 6, 2006. The maintenance plans demonstrate how the state intends to maintain the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. These plans replace the existing ozone maintenance plan for the former Hancock and Waldo Counties 1-hour marginal ozone nonattainment area. That plan had been included as part of the redesignation request for this area as required under 175A of the Clean Air Act. (See 62 FR 9081; February 28, 1997.)

Maine has four areas that are required to submit a CAA Section 110(a)(1) maintenance plan. This requirement applies to areas that are designated as attainment/unclassifiable for the 8-hour ozone standard and also had a designation of either nonattainment or attainment with an approved maintenance plan for the 1-hour ozone standard as of June 15, 2004 (the effective date of the 8-hour ozone standard designation for these areas).[1] In Maine, these areas are:

Area 1—Portions of York and Cumberland Counties;
Area 2—Portions of Androscoggin and all of Kennebec County;
Area 3—Portions of Knox and Lincoln Counties; and
Area 4—Portions of Hancock and Waldo Counties.

The exact cites and towns in these areas are listed in the Technical Support Document (TSD) for this action, and in the Maine submittal. The TSD and Maine's submittal are available in the docket for this action or from the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this action.

II. What Is a Section 110(a)(1) Maintenance Plan?

Section 110(a)(1) of the CAA requires, in part, that states submit to EPA plans to maintain any NAAQS promulgated

[1] See 69 FR 23857.

by EPA. EPA interprets this provision to require that areas that were either nonattainment or maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS. EPA established June 15, 2007, three years after the effective date of the initial 8-hour ozone designations, as the deadline for submission of plans for these areas.

On May 20, 2005, EPA issued guidance [2] that applies, in part, to areas that are designated attainment/unclassifiable for the 8-hour ozone standard and either have an approved 1-hour ozone maintenance plan or were designated nonattainment of the 1-hour ozone standard. The purpose of the guidance is to assist the states in the development of a SIP which addresses the maintenance requirements found in Section 110(a)(1) of the CAA. There are five components of a Section 110(a)(1) maintenance plan which are: (1) An attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) for a ten-year period from a base year as chosen by the state; (2) a maintenance demonstration which shows how the area will remain in compliance with the 8-hour ozone standard for 10 years after the effective date of designations (June 15, 2004); (3) a commitment to continue to operate air quality monitors; (4) a contingency plan that will ensure that a violation of the 8-hour ozone NAAQS is promptly addressed; and (5) an explanation of how the state will track the progress of the maintenance plan.

III. How Has Maine Addressed the Components of a Section 110(a)(1) 8-Hour Ozone Maintenance Plan?

EPA has determined that the ME DEP (Maine Department of Environmental Protection) 8-hour ozone maintenance plans address all of the necessary components of a Section 110(a)(1) 8-hour ozone maintenance plan as discussed below.

A. Emissions Inventory: An emissions inventory is an itemized list of emission estimates for sources of air pollution in a given area for a specified time period. ME DEP has provided a comprehensive and current emissions inventory for ozone precursors (NO_X and VOCs) in the four areas. ME DEP uses 2002 as the base year from which it projects emissions. The submittal also includes an explanation of the methodology used for determining the anthropogenic emissions (point, area, and mobile sources) in the maintenance areas. The inventory is based on emissions for a typical ozone season day. The term ''typical'' refers to emissions expected on a typical weekday during the months where ozone concentrations are typically the highest.

B. Maintenance Demonstration and Tracking Progress: With regard to demonstrating continued maintenance of the 8-hour ozone standard, ME DEP projects that the total emissions from the four maintenance areas will decrease during the ten-year maintenance period. ME DEP has projected emissions from 2002 until 2016. The projected trend in emissions is downward. This clearly demonstrates that the 8-hour ozone standard will be maintained for the ten year period between 2004 and 2014, which is the required test, even though a specific inventory was not prepared for 2014.

Tables 1 through 4 show the total VOC and NO_X emissions for each of the four maintenance areas in Maine for the base year (2002), an interim year (2009), and a final year (2016).[3] More detailed emissions tables can be found in the TSD for this action and the ME DEP submittal. The trend in emissions is downward, for each pollutant, in each area. As such, the plan demonstrates that, from an emissions projections standpoint, emissions are projected to decrease.

TABLE 1.—MAINTENANCE AREA 1—YORK AND CUMBERLAND COUNTY

[Emissions expressed in tons per summer week day]

Year	2002 VOC	2002 NO_X	2009 VOC	2009 NO_X	2016 VOC	2016 NO_X
Total	80.191	83.495	65.290	53.028	62.092	36.499

TABLE 2.—MAINTENANCE AREA 2—ANDROSCOGGIN AND KENNEBEC COUNTY

[Emissions expressed in tons per summer week day]

Year	2002 VOC	2002 NO_X	2009 VOC	2009 NO_X	2016 VOC	2016 NO_X
Total	31.820	32.322	25.430	21.042	23.405	13.608

TABLE 3.—MAINTENANCE AREA 3—KNOX AND LINCOLN COUNTY

[Emissions expressed in tons per summer week day]

Year	2002 VOC	2002 NO_X	2009 VOC	2009 NO_X	2016 VOC	2016 NO_X
Total	18.417	18.128	15.827	13.393	15.060	11.661

[2] ''Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,'' EPA memorandum dated May 20, 2005, from Lydia Wegman to Air Division Directors.

[3] It should be noted that the emissions shown in these tables are for the entire two counties named, rather than the somewhat smaller maintenance area, due to the difficulty of parsing out inventory data to a sub-county basis. This difference is not considered significant, and does not affect the downward trend shown in the emissions.

TABLE 4.—MAINTENANCE AREA 4—HANCOCK AND WALDO COUNTY

[Emissions expressed in tons per summer week day]

Year	2002 VOC	2002 NO_X	2009 VOC	2009 NO_X	2016 VOC	2016 NO_X
Total	24.034	18.355	18.887	11.103	17.143	7.426

It is important to note that the formation of ozone is dependent on a number of variables which cannot be estimated using only emissions growth and reduction calculations. These variables include, among others, weather and the transport of ozone precursors from outside the maintenance area. In its submittal, ME DEP has indicated that the state will track the progress of the maintenance plans by updating the emissions inventory for the four areas approximately every three years. The emissions inventory update will include point, area, and mobile source emissions. Information from these future updates will be compared with the 2002 inventory data to track maintenance of the standard.

C. Ambient Monitoring: With regard to the ambient air monitoring component of a maintenance plan, Maine's submittal describes the ozone monitoring network in Maine and commits to continue operating air quality monitors in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard. If any changes to the monitoring locations become necessary, Maine commits to working with EPA to ensure that the adequacy of the monitoring network is maintained. Based on ozone data from 2006, all of Maine meets the 8-hour ozone standard. Furthermore, preliminary ozone data for 2007 shows that all of Maine continues to meet this standard.

D. Contingency Measures: EPA interprets Section 110(a)(1) of the CAA to require that the state develop a contingency plan that will ensure that any violation of a NAAQS is promptly corrected. Therefore, as required by Section 110(a)(1) of the Act, Maine has listed possible contingency measures in the event of a future ozone air quality problem. At the conclusion of each ozone season, the Maine DEP will evaluate whether the design value for each of the maintenance areas meets the 8-hour ozone standard.[4] If the design value for an area does not meet the standard, the DEP will evaluate the potential causes of this design value increase. The DEP will examine whether this increase is due to an increase in local in-state emissions or an increase in upwind out-of-state emissions. If an increase in in-state emissions is determined to be a contributing factor to the design value increase, Maine will evaluate the projected in-state emissions for the relevant maintenance area for the ozone season in the following year. If in-state emissions are not expected to satisfactorily decrease in the following ozone season in order to mitigate the violation, Maine will implement one or more of the contingency measures listed in the submittal, or substitute a new VOC or NO_X control measures to achieve additional in-state emission reductions. The contingency measures(s) will be selected by the Governor, or the Governor's designee, within 6 months of the end of the ozone season for which contingency measures have been determined necessary. Further details on the types of possible control measures to be used as contingencies can be found in the TSD and the Maine submittal. Maine's submittal satisfies EPA's contingency measure requirements.

[4] The design value at an ozone monitor is the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration measured at that monitor. The design value for an area is the highest design value recorded at any monitor in the area.

IV. Final Action

EPA is approving into the Maine SIP the Clean Air Act Section 110(a)(1) 8-hour ozone maintenance plans for the four areas in Maine that are required to have such plans. These areas are: Portions of York and Cumberland Counties; portions of Androscoggin and all of Kennebec County; portions of Knox and Lincoln Counties; and portions of Hancock and Waldo Counties.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 31, 2008 without further notice unless the Agency receives relevant adverse comments by February 28, 2008.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 31, 2008 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 2008. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 16, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart U—Maine

■ 2. Section 52.1023 is amended by adding paragraph (i) to read as follows:

§ 52.1023 Control strategy: Ozone.

* * * * *

(i) Approval: EPA is approving the 110(a)(1) 8-hour ozone maintenance plans in the four areas of the state required to have a 110(a)(1) maintenance plan for the 8-hour ozone National Ambient Air Quality Standard. These areas are as follows: portions of York and Cumberland Counties; portions of Androscoggin County and all of Kennebec County; portions of Knox and Lincoln Counties; and portions of Hancock and Waldo Counties. These maintenance plans were submitted to EPA on August 3, 2006.

[FR Doc. E8–1416 Filed 1–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0024; FRL–8519–4]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Oxides of Nitrogen Regulations, Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving Michigan's oxides of nitrogen (NO_X) rules which satisfy the requirements of EPA's NO_X SIP Call Phase II Rule (the Phase II Rule). We are approving these regulations based on Michigan's demonstration that they will result in the achievement of the Phase II budget through source compliance with rules affecting stationary internal combustion (IC) engines which are identified in the NO_X plan submittal. Limiting NO_X emissions from IC engines will enable the State to meet the Phase II incremental difference of 1,033 tons during the ozone season, thereby improving air quality and protecting the health of Michigan citizens.

DATES: This direct final will be effective March 31, 2008, unless EPA receives adverse comments by February 28, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0024, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0024. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Engineer, at (312) 353–6960 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. Background
III. Who is affected by the new rule and the amended rules?
IV. What does approval of this rule accomplish?
V. How are owners and operators expected to comply with the new requirement?
VI. What action is EPA taking today?
VII. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

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

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

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

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

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

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

II. Background

On October 27, 1998 (63 FR 57356), EPA issued the NO_X SIP Call, which required 22 states, including Michigan, to prepare plans to reduce the transport of ozone throughout the eastern part of the United States. This was to be accomplished by reducing emissions of NO_X from selected source categories, primarily major fuel burning sources, using available cost-effective measures. The rule established a cap on emissions of NO_X from each state. States had flexibility in determining which fuel burning sources were to be included in their rules. For the most part, states targeted NO_X reductions from electric utilities and other large industrial boilers, cement kilns, and IC engines as sources which could be controlled in a cost-effective manner. Background information in this regard is available from documents prepared by EPA, and can be found at *http://www.epa.gov/ttn/rto/otag/index.html.*

Some states and industry challenged the rule. In *Michigan* v. *EPA*, 213 F.3d 663 (DC Cir. 2000), the Court largely upheld EPA's rulemaking. It did, however, remand a portion of the rule concerning IC engines to EPA for further notice and public comment.

Subsequent to the Court's decision, EPA proceeded initially with rules concerning electric generating units (EGU), industrial boilers (non-EGU) and cement kilns as Phase I sources. The IC engines fell into the Phase II group, to be addressed at a later date. Michigan adopted its Phase I rules and submitted them to EPA. We conditionally approved them on April 16, 2004 (69 FR 20548) and finally approved them on May 4, 2005 (70 FR 23029).

On April 21, 2004 (69 FR 21603), EPA issued the Phase II Rule. It required most states with Phase I budget programs to submit a Phase II plan to achieve incremental reductions not addressed by Phase I rules. The Phase II Rule also identified the additional NO_X budget reductions (incremental reductions) that states would have to achieve by regulating large (greater than one ton per day emissions) IC engines. EPA calculated the amount of incremental reductions required by re-calculating the overall budget to reflect a control level of 82 percent from natural gas-fired lean-burn IC engines with greater than one ton per day NO_X emissions. MDEQ drafted the new rule (R 336.1818 Emission limitations for stationary internal combustion engines, also known as Rule 818) based on guidance from EPA dated September 19, 2004, which contained an example model rule.

The public process for Rule 818 started on April 1, 2006 when the rule was made available for public comment in the Michigan State Register. On April 3, 2006, notices that the rule was available for public comment were published in four newspapers throughout Michigan. Both the notices in the Michigan State Register and the newspapers indicated that a public hearing would be held on the rule on May 9, 2006.

On December 22, 2006, the Michigan Department of Environmental Quality (MDEQ) submitted its Phase II rules to EPA. MDEQ sent additional follow-up

information addressing the budget demonstration for this source category in a March 12, 2007 letter requesting EPA approval. Because Michigan adopted EPA's model rule in which was used to calculate the state's Phase II budget, it follows that Michigan's Phase II budget will be met.

In the Phase II Rule, EPA calculated the 2007 base year emissions inventory from which Michigan needed additional reductions of 1,033 tons per ozone season. EPA based the calculation upon achieving an 82 percent reduction at all IC engines in Michigan with greater than one ton per day of NO_X emissions.

III. Who is affected by the new rule and the amended rules?

Rule 818 applies only in the fine grid portion of Michigan, as this is the only portion of Michigan where the NO_X SIP Call (both Phases I and II) applies (see 69 FR 21627–8). Michigan's fine grid includes the following counties: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenaee, Livingston, Macomb, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ottawa, Saginaw, Saint Clair, Saint Joseph, Sanilac, Shiawassee, Tuscola, Vanburen, Washtenaw and Wayne. Rule 818 applies to any person who owns or operates a large stationary reciprocating IC engine and other smaller stationary internal combustion engines that are included in a compliance plan. A large IC engine is defined as an engine that emits more than one ton of NO_X per ozone season day, based on operation during the 1995 ozone season.

IV. What does approval of this rule accomplish?

EPA published the incremental budget for affected states including Michigan in the April 21, 2004, **Federal Register** (69 FR 21604). The State's budget demonstration shows that the State will be able to reduce emissions of NO_X to meet the Phase II incremental difference of 1,033 tons of NO_X for the ozone season.

Approval of Rule 818 will provide a means by which the State of Michigan will meet the required reductions of NO_X emissions from IC engines during the ozone season. The State rule affects NO_X SIP Call IC engines, as well as any other stationary internal combustion engine subject to NO_X control in the State's rule, within Michigan's fine grid. The emission reductions for some large engines will be permanent and year-round resulting from low emission combustion measures retrofitted to existing engines. Low emission combustion measures cannot be cycled off once the changes are made to the engine. The combustion control technology is a permanent, physical change to the design and operation of the engine which, when implemented, is expected to reduce emissions of NO_X year-round. The State's rules include provisions which the source must follow to demonstrate compliance with the rules. EPA expects environmental benefits and health implications to be permanent.

V. How are owners and operators expected to comply with the new requirement?

The State Rule 818 includes a requirement that an owner or operator of a large IC engine shall not operate an affected engine during the ozone period, unless there is a compliance plan which meets the requirements of the rule. Owners and operators of subject large IC engines were required to submit compliance plans to the State by October 1, 2006, and the rules prohibit operation of affected engines after May 1, 2007, except in compliance with the requirements. Included in the compliance plan is a requirement that the projected NO_X emissions from the engine, in grams per break horsepower-hour, be included in a federally enforceable permit. This information will enable the State to determine if reductions from the covered sources should meet the Phase II budget increment. The failure of a source to meet the required NO_X reductions is a violation of the provisions of the permit. The State of Michigan is expected to enforce non-compliance with its rules by reviewing monitoring and testing information submitted by the owners and operators of the affected engines.

VI. What action is EPA taking today?

EPA is approving Rule 818 submitted by Michigan. We are taking this action because we have determined that the rule satisfies the requirements of the Clean Air Act and the NO_X SIP Call Phase II rules. The State has shown, through its budget demonstration, that it can achieve the Phase II budget increment through source compliance with the State's rules affecting IC engines and the State's permitting program. Meeting the Phase II budget increment and the Phase I increment means the State will meet its total overall ozone season NO_X budget and bring about reductions in ozone concentrations in the State and downwind from Michigan.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Regulatory Flexibility Act

This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

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

Dated: January 11, 2008.

Gary Gulezian,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart X—Michigan

■ 2. In § 52.1170, the table in paragraph (c) entitled ''EPA—Approved Michigan Regulations'' is amended by adding an entry in Part 8 for ''R 336.1818'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 8. Emission Limitations and Prohibitions—Oxides of Nitrogen				
*	*	*	*	*
R 336.1818	Emission limitations for stationary internal combustion engines.	11/20/06	1/29/08 [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. E8–1415 Filed 1–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0445; FRL–8348–8]

Acephate, Fenbutatin-Oxide (Hexakis), MCPA, Pyrethrins, and Triallate; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances for the insecticides acephate and pyrethrins. Also, EPA is modifying certain tolerances for the insecticides acephate and pyrethrins. In addition, EPA is establishing new tolerances for the herbicides MCPA and triallate, and the insecticides fenbutatin-oxide (hexakis) and pyrethrins. The regulatory actions finalized in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q).

DATES: This regulation is effective January 29, 2008. Objections and requests for hearings must be received on or before March 31, 2008, 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–2007–0445. 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 Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, 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: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address:*smith.jane-scott@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), 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 provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. 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–2007–0445 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 March 31, 2008.

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–2007–0445, by one of the following methods.

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

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of August 8, 2007 (72 FR 44439) (FRL–8138–8), EPA issued a proposal to revoke, modify, and establish specific tolerances for residues of the herbicides MCPA and triallate; and the insecticides acephate, fenbutatin-oxide (hexakis), and pyrethrins. Also, the proposal of August 8, 2007 provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In this final rule, EPA is revoking, modifying, and establishing specific tolerances for residues of acephate, fenbutatin-oxide (hexakis), MCPA, pyrethrins, and triallate in or on commodities listed in the regulatory text of the proposal published August 8, 2007.

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the Food Quality Protection Act (FQPA). The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone: 1 (800) 490–9198; fax: 1 (513) 489–8695; internet at *http://www.epa.gov/*

ncepihom/ and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; telephone: 1 (800) 553–6847 or (703) 605–6000; internet at: *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the Internet and in the public dockets EPA–HQ–OPP–2007–0445 and EPA–HQ–OPP–2004–0154 (fenbutatin-oxide/hexakis), EPA–HQ–OPP–2004–0156 (MCPA), EPA–HQ–OPP–2005–0043 (pyrethrins), and EPA–HQ–OPP–2006–0586 (triallate) at *http://www.regulations.gov and http://www.epa.gov/pesticides/reregistration/status.htm*.

In this final rule, EPA is revoking certain tolerances and tolerance exemptions because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domesticcommodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of August 8, 2007 (72 FR 44439), EPA received comments during the 60–day public comment period, as follows:

General. Comment by Pat Duggan, Editor of the Pesticide Chemical News Guide. The commenter questions why the Agency is retaining the postharvest designation on many of the pyrethrin tolerances when in a previous notice for the chemical thiophanate-methyl it was stated that ''the Agency has determined that the timings of treatment should not be included as part of these tolerances because the enforcement agency analyzing samples would not know whether a commodity bore residues resulting from a seed treatment.''

Agency Response. Currently, residues of pyrethrin are regulated in two sections of the 40 CFR part 180. Residues of pyrethrins resulting from preharvest applications are regulated under the exemption in 40 CFR 180.905(a)(6). Residues of pyrethrins resulting from postharvest applications are regulated by tolerances in 40 CFR 180.128. Since there is an exemption in place for pyrethrins, there are deficiencies in the residue data used to support some tolerances. As part of the reregistration decision, the residue studies that were not previously conducted on crop groups and other commodities are being required and/or are underway. Although there are some residue data deficiencies, EPA was able to make a safety finding using conservative assumptions in the risk assessment, which indicated no dietary risks, and to consider the tolerances reassessed. Therefore, the Agency is retaining the postharvest terminology on an *interim basis* until these data for preharvest uses are received from the registrants and to prevent confusion in the 40 CFR part 180 between § 180.905(a)(6) and § 180.128 (unlike thiophanate-methyl which appears in only one section of the CFR.) Once the preharvest data are evaluated, and the Agency confirms that the tolerances in § 180.128 are reflective of the pre- and postharvest residue levels, the Agency intends to remove the postharvest designation to be consistent with current Agency practice.

The Agency did not receive comments on the following chemicals: acephate, fenbutatin-oxide (hexakis), MCPA, and triallate. Therefore, the Agency is finalizing, with the exception of the chlorpyrifos and metolachlor tolerances, the amendments proposed in the **Federal Register** of August 8, 2007 (72 FR 44439) (FRL–8138–8). The Agency received comments on chlorpyrifos and metolachlor which require additional time to address. The Agency will publish the response to comment and final tolerance rule for chlorpyrifos and metolachlor in the future. For a detailed discussion of the Agency's rationale for the establishments, revocations, and modifications to the tolerances, refer to the August 8, 2007 proposed rule.

B. What is the Agency's Authority for Taking this Action?

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FQPA. The safety finding determination is found in detail in each RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs for pyrethrins, MCPA, triallate, and TREDs for acephate and fenbutatin-oxide whose REDs were completed prior to FQPA. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs, that are made final in this document, do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. Nonetheless, EPA will

establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and180.6(c)).

C. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register**. The tolerances revoked in this rule are associated with uses that have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are the Actions Consistent with International Obligations?

The tolerance revocations in this final rule are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standard established by FFDCA. The same food safety standards apply to domestically produced and imported foods.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue levels (MRLs) established by the Codex Alimentarius Commission, as required by section 408(b)(4) of the FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in Unit II.A. Specific tolerance actions in this final rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A.

IV. Statutory and Executive Order Reviews

In this final rule, EPA is establishing tolerances under FFDCA section 408(e), and modifying and revoking specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled*Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This 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.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this final rule, the Agency hereby certifies that this action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this final rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with

comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled*Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

List of Subjects in 40 CFR Part 180

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

Dated: January 17, 2008.

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 180.108 is amended by revising paragraph (a)(1), paragragh (a)(2) introductory text, and (c) to read as follows:

§ 180.108 Acephate; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of acephate *per se* (*O,S*-dimethyl acetylphosphoramidothioate) in or on the following food commodities[1]:

Commodity[1]	Parts per million
Bean, dry, seed	3.0
Bean, succulent	3.0
Brussels sprouts	3.0
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Cauliflower	2.0
Celery	10
Cotton, hulls	1.0
Cotton, meal	1.0
Cotton, undelinted seed	0.5
Cranberry	0.5
Egg	0.1
Goat, fat	0.1
Goat, meat	0.1
Goat, meat byproducts	0.1
Hog, fat	0.1
Hog, meat	0.1
Hog, meat byproducts	0.1
Horse, fat	0.1
Horse, meat	0.1
Horse, meat byproducts	0.1
Lettuce, head	10
Milk	0.1
Peanut	0.2
Pepper	4.0
Peppermint, tops	27
Poultry, fat	0.1
Poultry, meat	0.1
Poultry, meat byproducts	0.1
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Spearmint, tops	27
Soybean, seed	1.0

[1]Residues of the acephate metabolite, methamidophos, are regulated under 40 CFR 180.315

(2) A food tolerance of 0.02 ppm is established for residues of acephate *per se* (*O,S*-dimethyl acetylphosphoramidothioate) as follows:

* * * * *

(c) *Tolerances with regional registration.* Tolerances with regional registration, as defined in § 180.1(m), are established for residues of acephate *per se* (*O,S*-dimethyl acetylphosphoramidothioate) in or on the following food commodities:

Commodity	Parts per million
Nut, macadamia	0.05

* * * * *

■ 3. Section 180.128 is amended by revising paragraph (a) to read as follows:

§ 180.128 Pyrethrins; tolerances for residues.

(a) *General.* (1) Tolerances for residues of the insecticide pyrethrins ((1S)-2-methyl-4-oxo-3-(2Z)-2,4-pentadienylcyclopenten-1-yl (1R,3R)-2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate (pyrethrin 1), (1S)-2-methyl-4-oxo-3-(2Z)-2,4-pentadienyl-2-cyclopenten-1-yl (1R,3R)-3-[(1E)-3-methoxy-2-methyl-3-oxo-1-propenyl]-2,2-dimethylcyclopropane-carboxylate (pyrethrin 2), (1S)-3-(2Z)-2-butenyl-2-methyl-4-oxo-2-cyclopenten-1-yl (1R,3R)-2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate (cinerin 1), (1S)-3-(2Z)-2-butenyl-2-methyl-4-oxo-2-cyclopenten-1-yl (1R,3R)-3-[(1E)-3-methoxy-2-methyl-3-oxo-1-propenyl]-2,2-dimethylcyclopropanecarboxylate (cinerin 2), (1S)-2-methyl-4-oxo-3-(2Z)-2-pentenyl-2-cyclopenten-1-yl (1R, 3R)-2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate (jasmolin 1), and (1S)-2-methyl-4-oxo-3-(2Z)-pentenyl-2-cyclopenten-1-yl (1R,3R)-3-[(1E)-3-methoxy-2-methyl-3-oxo-1-propenyl]-2,2-dimethylcyclopropanecarboxylate (jasmolin 2)), the insecticidally active principles of Chrysanthemum cinerariaefolium, which are measured as cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 are not to exceed the following:

Commodity	Parts per million
Almond, postharvest	1.0
Apple, postharvest	1.0
Barley, grain, postharvest	3.0
Bean, succulent, postharvest	1.0
Birdseed, mixtures, postharvest	3.0
Blackberry, postharvest	1.0
Blueberry, postharvest	1.0

Commodity	Parts per million
Boysenberry, postharvest	1.0
Buckwheat, grain, postharvest	3.0
Cacao bean, roasted bean, postharvest	1.0
Cattle, fat	1.0
Cattle, meat	0.05
Cattle, meat byproducts	0.05
Cherry, sweet, postharvest	1.0
Cherry, tart, postharvest	1.0
Coconut, copra, postharvest	1.0
Corn, field, grain, postharvest	3.0
Corn, pop, grain, postharvest	3.0
Cotton, undelinted seed, postharvest	1.0
Crabapple, postharvest	1.0
Currant, postharvest	1.0
Dewberry, postharvest	1.0
Fig, postharvest	1.0
Flax, seed, postharvest	1.0
Goat, fat	1.0
Goat, meat	0.05
Goat, meat byproducts	0.05
Gooseberry, postharvest	1.0
Grape, postharvest	1.0
Guava, postharvest	1.0
Hog, fat	1.0
Hog, meat	0.05
Hog, meat byproducts	0.05
Horse, fat	1.0
Horse, meat	0.05
Horse, meat byproducts	0.05
Loganberry, postharvest	1.0
Mango, postharvest	1.0
Milk, fat (reflecting negligible residues in milk)	0.05
Muskmelon, postharvest	1.0
Oat, grain, postharvest	1.0
Orange, postharvest	1.0
Pea, dry, seed, postharvest	1.0
Peach, postharvest	1.0
Peanut, postharvest	1.0
Pear, postharvest	1.0
Pineapple, postharvest	1.0
Plum, prune, fresh, postharvest	1.0
Potato, postharvest	0.05
Raspberry, postharvest	1.0
Rice, grain, postharvest	3.0
Rye, grain, postharvest	3.0
Sheep, fat	1.0
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Sorghum, grain, grain, postharvest	1.0
Sweet potato, postharvest	0.05
Tomato, postharvest	1.0
Walnut, postharvest	1.0
Wheat, grain, postharvest	3.0

(2) A tolerance of 1.0 ppm is established for residues of the insecticide pyrethrins in or on milled fractions derived from grain, cereal when present as a result of its use in cereal grain mills and in storage areas for milled cereal grain products.

(3) A tolerance of 1.0 ppm is established for residues of the insecticide pyrethrins in or on all food items in food handling establishments where food and food products are held, processed, prepared and/or served. Food must be removed or covered prior to use.

(4) Where tolerances are established on both the raw agricultural commodities and processed foods made there-from, the total residues of pyrethrins in or on the processed food shall not be greater than that permitted by the larger of the two tolerances.

* * * * *

■ 4. Section 180.314 is amended by alphabetically adding the following commodity to the table in paragraph (c) to read as follows

§ 180.314 Triallate; tolerance for residues.

* * * * *

(c) *Tolerances with regional registrations.* * * *

Commodity	Parts per million
* * *	* *
Wheat, forage	0.05
* * *	* *

* * * * *

■ 5. Section 180.339 is amended by alphabetically adding the following commodity to the table in paragraph (a)(1) to read as follows.

§ 180.339 MCPA; tolerances for residues.

(a)(1) *General.* * * *

Commodity	Parts per million
* * *	* *
Grain, aspirated fractions	3.0
* * *	* *

* * * * *

■ 6. Section 180.362 is amended by alphabetically adding the following commodity to the table in paragraph (a)(1) to read as follows.

§ 180.362 Hexakis (2-methyl-2-phenylpropyl)distannoxane; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * *	* *
Pistachio	0.5
* * *	* *

* * * * *

[FR Doc. E8–1535 Filed 1–28–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[EPA–HQ–OPPT–2007–0487; FRL–8154–2]

RIN 2070–AB11

Health and Safety Data Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule, issued pursuant to section 8(d) of the Toxic Substances Control Act (TSCA) and its regulations, requires manufacturers (including importers) of consumer products intended for use by children who also manufacture (including import) lead or lead compounds to report certain unpublished health and safety data to EPA. This final rule adds lead and lead compounds to 40 CFR 716.120 because the Interagency Testing Committee (ITC) added the category of lead and lead compounds to the *Priority Testing List* through its 60th ITC Report. The ITC was established under section 4(e) of TSCA to recommend chemicals and chemical mixtures to EPA for priority testing consideration; the ITC periodically amends the TSCA section 4(e) *Priority Testing List* through periodic reports submitted to EPA.

DATES: This final rule is effective on February 28, 2008. For purposes of judicial review, this final rule shall be promulgated at 1 p.m. eastern daylight/standard time on February 12, 2008. (See 40 CFR 23.5.)

A request to withdraw a chemical from this final rule pursuant to 40 CFR 716.105(c) must be received on or before February 12, 2008. (See Unit IV. of the **SUPPLEMENTARY INFORMATION**.)

For dates for reporting requirements, see Unit III.B. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0487, by one of the following methods.

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC, Attention: Docket ID Number EPA–HQ–OPPT–2007–0487. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0487. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' systems, 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 public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

Data Submissions: Copies of health and safety studies and accompanying cover letters, lists of health and safety studies, requests for extensions of time, and withdrawal requests must be submitted in accordance with the instructions in 40 CFR 716.30, 716.35, 716.60, and 716.105, respectively. Each submission must be identified by docket ID number EPA–HQ–OPPT–2007–0487.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Joe Nash, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8886; fax number: (202) 564–4765; e-mail address: *ccd.citb@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may potentially be affected by this action if you manufacture (including import) consumer products intended for use by children and also manufacture (including import) lead or lead compounds. Importers are a subset of manufacturers under TSCA.

Potentially affected entities may include, but are not limited to:

• Manufacturers (including importers) of costume jewelry and novelty manufacturing (NAICS code 339914).

• Manufacturers (including importers) of dolls and stuffed toys (NAICS code 339931).

• Manufacturers (including importers) of games, toys, and children's vehicles (NAICS code 339932).

• Manufacturers (including importers) of fasteners, buttons, needles, and pins (NAICS code 339993).

• Wholesalers of toy and hobby goods, establishments with product line 12812 (NAICS code 42392).

• Discount department stores (NAICS code 452112).

• Warehouse clubs and supercenters (NAICS code 45291).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Do I Submit CBI Information?

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.

II. Background

A. What Action is the Agency Taking?

EPA is amending its model Health and Safety Data Reporting rule under TSCA section 8(d) (TSCA section 8(d) model rule) to require manufacturers (including importers) of consumer products intended for use by children who also manufacture (including import) lead or lead compounds, as listed on the ITC's TSCA section 4(e) *Priority Testing List*, to submit certain unpublished health and safety data to EPA. The import of children's products

that contain lead or lead compounds constitutes the manufacture of lead or lead compounds under TSCA. EPA believes importers of such products are the entities most likely to have the type of health and safety studies EPA is seeking.

Based on information available to the Agency, EPA believes that imported items represent a majority of the value of sales of toys and games (without regard to lead content) in NAICS code 42392. In addition, EPA has reviewed Consumer Product Safety Commission (CPSC) recalls of lead-contaminated children's products. None of the recalls reviewed implicated products that were produced domestically. See CPSC Recalls and Product Safety News at *http://www.cpsc.gov/cpscpub/prerel/prerel.html* (Ref. 1).

Processors are not included in this final rule. As explained in Unit II.B., the ITC listing procedure and the TSCA section 8(d) model rule do not generally result in TSCA section 8(d) model rules that cover processors. Therefore, a domestic company that processes lead in the manufacture of children's products would not be covered, unless that company also manufactures (including imports) lead or lead compounds.

The regulatory text of this document lists examples of chemicals and their CAS numbers in the category of lead and lead compounds. The regulatory text also lists the data reporting requirements imposed by this amendment to the TSCA section 8(d) model rule.

B. What is the Agency's Authority?

Section 8(d) of TSCA allows EPA to ''promulgate rules under which the Administrator shall require any person who manufactures, processes or distributes in commerce or who proposes to manufacture, process or distribute in commerce any chemical substance or mixture'' to submit lists of certain health and safety studies, as well as copies of such studies (15 U.S.C. 2607(d)). Under TSCA, import is included in the definition of ''manufacture'' (15 U.S.C. 2602(7)).

The TSCA section 8(d) model rule (15 U.S.C. 2607(d)) is codified at 40 CFR part 716. EPA uses this TSCA section 8(d) model rule to quickly gather current information on chemicals. The TSCA section 8(d) model rule requires past, current, and prospective manufacturers, importers, and (if specified by EPA in a particular rule under TSCA section 8(d)) processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or (if specified by EPA in a particular rule under TSCA section 8(d)) process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

The TSCA section 8(d) model rule provides for the addition of TSCA section 4(e) *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC report, EPA amends, unless otherwise instructed by the ITC, the TSCA section 8(d) model rule by adding the recommended (or designated) chemicals. In doing so, EPA must provide a 14–day period, which starts 14 days after date of publication of the amendments to the TSCA section 8(d) model rule in the **Federal Register**, for persons to submit information showing why a chemical substance, mixture, or category of chemical substances should be withdrawn from the amendment. The amendment adding these chemicals to the TSCA section 8(d) model rule is effective 30 days after date of publication in the **Federal Register**. If the Administrator withdraws a chemical from the amendment, then no later than 30 days after the date of publication of the amendment in the **Federal Register**, a **Federal Register** document announcing this decision is published.

Explanations of the procedures to follow if a respondent to this rule wishes to assert a claim of confidentiality for a part of a study or certain information contained in a study are provided at 40 CFR 716.55.

C. Related Obligations Under TSCA Section 8

Aside from obligations that will arise under this final rule, persons who manufacture, process, or distribute lead may be subject to other requirements under TSCA section 8. For example, TSCA section 8(e) (15 U.S.C. 2607(e)) requires that:

> Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

Toxicity data that indicate a substantial risk of injury to health or the environment are the most common kinds of information received by EPA under TSCA section 8(e), but the Agency also often receives information on exposure, environmental persistence, or other kinds of information that indicate a substantial risk of injury to health or the environment. Of note, given the focus of this TSCA section 8(d) model rule, EPA issued guidance in September 2006 (Ref. 2) that may be relevant to persons who manufacture, process, or distribute lead-containing products intended for use by children. The guidance discusses the circumstances under which reporting under TSCA section 8(e) should be considered for substantial risk information obtained that indicates:

1. Previously unknown and significant human exposure to a chemical known to cause serious health effects (e.g., absorption of a chemical from manufactured products or articles) or

2. The presence of a previously unknown hazardous or toxic constituent in a product, including manufactured articles. Other guidance and information relevant to TSCA section 8(e) reporting are available on the TSCA section 8(e) website at *http://www.epa.gov/oppt/tsca8e/index.htm*.

D. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity for comment pursuant to the procedures set forth in 40 CFR 716.105(b) and (c). EPA finds that there is ''good cause'' under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these amendments without prior notice and comment. EPA believes notice and an opportunity for comment on this action are unnecessary. TSCA directs the ITC to add chemicals to the *Priority Testing List* for which EPA should give priority consideration. EPA also lacks the authority to remove a chemical from the *Priority Testing List* once it has been added by the ITC. As explained earlier in this preamble, pursuant to 40 CFR 716.105(b) and (c), once the ITC adds a chemical to the *Priority Testing List*, EPA in turn is obliged to add that chemical to the list of chemicals subject to the TSCA section 8(d) model rule reporting requirements, unless requested not to do so by the ITC. EPA promulgated this procedure in 1985 after having solicited public comment on the need for and mechanics of this procedure (Ref. 3). Because that rule established the procedure for adding ITC chemicals to the TSCA section 8(d) model rule, it is unnecessary to request comment on the procedure in this action. Finally, 40 CFR 716.105(b) and (c) do provide EPA with the discretion to withdraw a chemical from the TSCA

section 8(d) model rule if a party submits to EPA information showing good cause that a chemical should be removed from the TSCA section 8(d) model rule.

III. Final Rule

A. What Chemicals Are to be Added?

In this document, EPA is adding the category of lead and lead compounds to the TSCA section 8(d) model rule as requested by the ITC in its 60th ITC Report (Ref. 4). This final rule requires manufacturers (including importers) of consumer products intended for use by children who also manufacture (including import) lead or lead compounds to report certain unpublished health and safety data to EPA.

B. What Are the General Reporting Requirements and Deadlines?

The general provisions regarding the submission of copies and lists of studies under EPA's TSCA section 8(d) model rule are located at 40 CFR 716.30 and 716.35, respectively, and additional reporting requirements and exemptions are described elsewhere in 40 CFR part 716. The reporting schedule and reporting period for persons subject to this final rule are described at 40 CFR 716.60 and 716.65. Chemical specific reporting requirements appear at 40 CFR 716.21.

C. What Are the Chemical Specific Reporting Requirements?

Pursuant to 40 CFR 716.20(b)(5), this amendment specifies the types of environmental fate, health, and/or environmental effects studies that must be reported and the chemical grade/purity requirements that must be met or exceeded in individual studies for lead and lead compounds. The amendment requires the submission of all unpublished health and safety studies that:

1. Relate to the lead content of consumer products that are ''intended for use by children'' as that term is defined at 40 CFR 710.43 (excluding children's metal jewelry, as described by CPSC in its ANPRM) (Ref. 5), or

2. Assess children's exposure to lead from such products (including studies of bioavailability). With regard to grade/purity requirements, studies showing any measurable lead content in such products must be submitted.

The exclusion for children's metal jewelry functions to exempt studies on those products already being directly addressed by CPSC. For more information on CPSC's actions, please see CPSC's Advance Notice of Proposed Rulemaking (ANPRM) regarding children's jewelry containing lead (Ref. 5).

This final rule does not require reporting of any other health and safety studies.

This amendment also specifies manufacturers subject to these reporting requirements: Manufacturers (including importers) of consumer products intended for use by children who also manufacture (including import) lead or lead compounds.

D. Economic Analysis

The economic analysis for the addition of lead and lead compounds to the TSCA section 8(d) model rule is entitled, *TSCA Section 8(d): Economic Impact Analysis for Adding Lead and Lead Compounds from the 60th Report of the TSCA Interagency Testing Committee to the Health and Safety Data Reporting rule*. November 14, 2007. (Ref. 6).

The number of firms that will be affected by this final rule could not be estimated directly by EPA in the Economic Analysis. In most previous instances, the TSCA section 8(d) analysis has focused on the firms that manufacture the chemicals, as shown in the EPA-maintained Chemical Update System (CUS) database. In this instance, the CUS database does not include those companies that manufacture (including import) consumer products intended for use by children as well as manufacture (including import) lead or lead compounds. Importers are a subset of manufacturers under TSCA.

Reporting requirements are further limited to those studies that relate to the lead content of consumer products (excluding metal toy jewelry) that are intended for use by children or studies that assess children's exposure to lead from such products (including studies of bioavailability).

The U.S. Census Bureau's Economic Census does not separately identify these firms. As a result, it is difficult to estimate the number of firms affected by this rule. The Agency has chosen to estimate the number of affected firms by using census data of the number of firms included in certain NAICS categories, selected with the expectation that these categories include firms which may be engaged in manufacturing or importing children's products. The selected categories and the number of firms in each are:

- NAICS code 339914—Costume jewelry and novelty manufacturing (651 firms).
- NAICS code 339931—Doll and stuffed toy manufacturing (134 firms).
- NAICS code 339932—Game, toy, and children's vehicle manufacturing (733 firms).
- NAICS code 339993—Fastener, button, needle, and pin manufacturing (180 firms).
- NAICS code 42392—Toy and hobby goods and supplies merchant wholesalers (establishments with product line 12812) (1,310 firms).
- NAICS code 452112—Discount department stores (39 firms).
- NAICS code 45291—Warehouse clubs and supercenters (16 firms).

It is expected that some number of firms within those categories will not need to respond, and that some other unknown number of firms not within those categories will be required to respond. This tabulation is meant to be suggestive of the potential number of respondents, given the available information, and cannot be expected to be an accurate point estimate.

The number of studies that might be submitted in response to this final rule is also difficult to estimate. The number of firms involved is likely to be larger than for other chemicals that have been listed under amendments to the TSCA section 8(d) model rule. However, the nature of the studies required to be submitted are restricted to a specific category.

An earlier examination of studies submitted under previous amendments to the TSCA section 8(d) model rule over an 8 year period prior to April 2002 reported an average of 5.66 studies per chemical. An examination of more recent experience with amendments to the TSCA section 8(d) model rule reported an average of 1 study per chemical. Based both on past EPA experience and on the professional judgment of Agency personnel responsible for the TSCA section 8(d) program, EPA estimates an average of 5 studies will be submitted for each of the 12 chemicals listed as examples of chemicals in the lead and lead compounds category, for a total of 60 studies. However, in consideration of the uncertainty of this per chemical estimate and the fact that relevant studies on lead compounds other than the listed 12 example compounds may be reported, the Economic Analysis also estimates the costs in a case where 10 times that number, or 600, studies are submitted (Ref. 6).

Given the assumptions in this unit, the industry reporting costs and burden associated with this rule are estimated in the Economic Analysis (Ref. 6) to be the following:

INDUSTRY REPORTING COSTS (DOLLARS) AND BURDEN (HOURS)

Collection Activity	(a) Unit Burden Hours	(b) Unit Cost	(c) Number of Firms or Sites Per Activity	(d) = (a) x (c) Total Burden Hours	(e) = (b) x (c) Total Cost
1. Review of rule	2 hours	$126.66	3,063	6,126	$387,960
2. Site identification	3 hours	$189.99	1,317	3,951	$250,584
3. Site file search	3 hours	$161.34	1,361	4,083	$219,584
4. Study title lists	1 hour	$26.40	60	60	$1,584
5. Photocopy studies	0.5 hour	$13.20	60	30	$792
6. Robust summaries	6 hours	$322.68	6	36	$1,936
7. CBI review	1 hour	$63.33	60	60	$3,800
8. Post-reporting period submission	1.5 hours	$76.53	1	1.5	$77
Total				14,347	$865,949
Note: Not all respondents perform all activities.					

The sensitivity analysis conducted to estimate the costs if 600 studies are submitted suggests that the burden estimate for this TSCA section 8(d) action is relatively insensitive to the estimate of the number of studies. A ten-fold error in that estimate is calculated to lead to an increase of roughly 1,500 burden hours (or less than 12%), and an increase of about $74,000 in cost (or less than 10%). The burden and cost estimates are largely determined by the estimate of the number of responding firms, and is relatively insensitive to the estimate of the number of studies.

The estimated annual cost of the TSCA section 8(d) model rule to the Federal Government is approximately the time of one full-time employee, or 2,080 hours. Based on previous TSCA section 8(d) analyses and Agency professional judgment, this particular data collection is expected to represent 25% of 1 year's burden, or the equivalent of approximately 520 hours. That will amount to a cost to Federal Government of $25,285.

IV. Requesting a Chemical be Withdrawn from the Rule

As specified in 40 CFR 716.105(c), EPA may remove a chemical substance, mixture, or category of chemical substances from this final rule for good cause prior to the effective date of this final rule. Any person who believes that the reporting required by this final rule is not warranted for a chemical substance, mixture, or category of chemical substances listed in this final rule, must submit to EPA detailed reasons for that belief. You must submit your request to EPA on or before February 12, 2008 and in accordance with the instructions provided in 40 CFR 716.105(c), which are briefly summarized here. In addition, to ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPPT–2007–0487 on your request and submit that request in accordance with the instructions in 40 CFR 716.105(c). If the Administrator withdraws a chemical substance, mixture, or category of chemical substances from the amendment, in accordance with 40 CFR 716.105(c), a **Federal Register** document announcing this decision will be published no later than February 28, 2008.

V. Materials in the Docket

The official docket for this final rule has been established under docket ID number EPA–HQ–OPPT–2007–0487. The official public docket is available for review as specified in **ADDRESSES**. The following is a listing of the documents referenced in this preamble that have been placed in the official docket for this final rule:

1. CPSC. Recalls and Product Safety News. Available on-line at: *http://www.cpsc.gov/cpscpub/prerel/prerel.html*.

2. EPA. Toxic Substances Control Act (TSCA) Section 8(e) Notices—Frequent Questions—September 2006—Health and Safety - Questions 25 and 26. Available on-line at: *http://www.epa.gov/oppt/tsca8e/pubs/frequentlyaskedquestions faqs.htm#health2*.

3. EPA. Chemical Information Rules; Additional Automatic Reporting; Final Rule. **Federal Register** (50 FR 34809; August 28, 1985).

4. ITC. Sixtieth Report of the ITC. **Federal Register** (72 FR 41414, July 27, 2007) (FRL–8137–6). Available on-line at: *http://www.epa.gov/fedrgstr*.

5. CPSC. Children's Jewelry Containing Lead; Advanced Notice of Proposed Rulemaking; Request for Comments and Information. **Federal Register** (72 FR 920, January 9, 2007).

6. EPA. TSCA Section 8(d): Economic Impact Analysis for Adding Lead and Lead Compounds from the 60th Report of the TSCA Interagency Testing Committee to the Health and Safety Data Reporting rule. November 14, 2007.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(d) related to the TSCA section 8(d) model rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

The information collection requirements contained in TSCA section 8(d) model rules have already been approved by OMB under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and OMB control number 2070–0004 (EPA ICR No. 0575). The collection activities in this final rule are captured by the existing approval and do not require additional review and/or approval by OMB.

EPA estimates that the information collection activities related to health and safety data reporting for the category of lead and lead compounds in this final rule will result in a total

public reporting burden of 14,348 hours, or roughly 4.7 hours per firm. Of that total, an estimated 6,126 hours are estimated to be spent performing an initial review of the final rule. The remaining hours are associated with the actual required reporting activities (Ref. 6). As defined by the PRA and 5 CFR 1320.3(b), ''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 which have subsequently changed; 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.

Under PRA, an Agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, including its regulations implementing TSCA section 8(d) at 40 CFR part 716, are listed in the table in 40 CFR part 9 and included on the related collection instrument. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the Economic Analysis (Ref. 6) for this final rule, and is summarized here.

To estimate the impact of the final rule on a business, EPA used the ''sales test,'' wherein costs for any individual firm are measured as a percent of annual sales. The average cost per company for the final rule is estimated to be $283. At an average cost for any one firm of $283, the firm's total sales would have to be less than $30,000 for this final rule to have an impact of even 1% of sales. Because of the uncertainty regarding the number and identity of the firms who will be required to respond to this data collection, it is not possible to directly compare the estimated cost to the actual sales volume of those firms. But due to the low level of the impact, it is not expected that this action will have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this final 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 1 year. In addition, EPA has determined that this final rule will not significantly or uniquely affect small governments. Accordingly, the final rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Orders 13132 and 13175

Based on EPA's experience with past TSCA section 8(d) model rules, State, local, and tribal governments have not been impacted by these rules, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this final rule. As a result, these rules are not subject to the requirements in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) or Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

F. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23,1997), does not apply to this final rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This final rule requires the reporting of health and safety data to EPA by manufacturers (including importers) of certain chemicals requested by the ITC to be added to the TSCA 8(d) model rule in its 60th ITC Report (Ref. 4).

G. Executive Order 13211

This final rule is not subject to Executive Order 13211, entitled *Actions that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

H. National Technology Transfer and Advancement Act

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). Section 12(d) of NTTAA 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.

I. Executive Order 12898

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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 the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Children, Hazardous substances, Health and safety, Lead, Reporting and recordkeeping requirements, Toys.

Dated: January 22, 2008.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

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

PART 716—[AMENDED]

■ 1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

■ 2. By adding a new paragraph (a)(8) to § 716.21 to read as follows:

§ 716.21 Chemical specific reporting requirements.

(a) * * *

(8)(i) Reporting requirements apply only to manufacturers (including importers) of consumer products intended for use by children who also manufacture (including import) lead or lead compounds. For the category ''lead and lead compounds,'' all unpublished health and safety studies that:

(A) Relate to the lead content of consumer products that are ''intended for use by children'' as that term is defined at 40 CFR 710.43 (excluding children's metal jewelry), or

(B) Assess children's exposure to lead from such products (including studies of bioavailability).

(ii) With regard to purity, studies showing any measurable lead content in such products must be submitted.

* * * * *

■ 3. In § 716.120, the table in paragraph (c) is amended by adding in alphabetical order the category ''Lead and lead compounds'' and its entries to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(c) * * *

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
* * *	* * *	* *	* *	
Lead and lead compounds	.....	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Lead	7439–92–1	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Acetic acid, lead (2+) salt	301–04–2	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Carbonic acid, lead (2+) salt (1:1)	598–63–0	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Lead chloride ($PbCl_2$)	7758–95–4	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Chromic acid (H_2Cr0_4), lead (2+) salt (1:1)	7758–97–6	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Lead oxide (PbO_2)	1309–60–0	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Borate (1-), tetrafluoro-, lead (2+) (2:1)	13814–96–5	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Phosphoric acid, lead (2+) salt (2:3)	7446–27–7	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Silicic acid, lead salt, basic	53466–66–3	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Octadecanoic acid, lead salt (1:?)	7428–48–0	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Sulfuric acid, lead salt (1:?), basic	63653–42–9	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
Lead sulfide (PbS)	1314–87–0	§ 716.21(a)(8)	February 28, 2008	April 28, 2008
* * *	* * *	* *	* *	

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[FR Doc. E8–1546 Filed 1–28–08; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080123076–8078–01]

RIN 0648–XF27

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,637 nm^2 (9,045 km^2), south of Rockland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours January 31, 2008, through 2400 hours February 14, 2008.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming

entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (257 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (3.43 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 17, 2008, an aerial survey reported an aggregation of twenty-nine right whales in the proximity of 43° 11' N latitude and 68° 20' W longitude. The position lies approximately 60 nm south of Rockland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

43° 40' N., 68° 53' W. (NW Corner)
43° 40' N., 67° 46' W.
42° 46' N., 67° 46' W.
42° 46' N., 68° 53' W.
43° 40' N., 68° 53' W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: a portion of this DAM zone overlaps the year-round Cashes Ledge Closure Area found at 50 CFR 648.81(d), and the February Cashes Ledge Closure Area for Harbor Porpoise found at 50 CFR 229.33(a)(6). Due to these closures, sink gillnet gear is prohibited from these portions of the DAM zone.

Lobster Trap/pot Gear

Fishermen utilizing lobster trap/pot gear within portions of Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. The breaking strength of each net panel weak link must not exceed 1,100 lb (498.8 kg). The weak link requirements apply to all variations in net panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or, one weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg)

Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours January 31, 2008, through 2400 hours February 14, 2008, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: January 23, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 08–375 Filed 1–24–08; 1:37 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0612243157–7799–07]

RIN 0648–AT87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery and Shrimp Fishery of the Gulf of Mexico; Amendment 27/14

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement joint Amendment 27 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Amendment 14 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP)(Amendment 27/14) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule reduces the commercial and recreational quotas for red snapper, reduces the commercial minimum size limit for red snapper, reduces the recreational bag limit for red snapper, prohibits the retention of red snapper under the bag limit for the captain and crew of a vessel operating as a charter vessel or headboat, establishes a red snapper recreational season that is open from June 1 through September 30 each year, requires the use of non-stainless steel circle hooks when using natural baits to fish for Gulf reef fish, requires the use of venting tools and dehooking devices when participating in the commercial or recreational reef fish fisheries, and consistent with the Amendment's framework procedure, provides for

implementing seasonal closures of the Gulf shrimp fishery to reduce red snapper bycatch based upon the 74 percent bycatch reduction target established in this final rule. In addition, this final rule establishes a framework procedure to adjust the target effort level and any necessary closures for the Gulf shrimp fishery. The measures contained in this final rule are intended to establish a revised red snapper rebuilding plan and to end overfishing of the red snapper resource in the Gulf of Mexico.

DATES: This final rule is effective February 28, 2008, except for § 622.41(m) which is effective June 1, 2008.

ADDRESSES: Copies of the Final Supplemental Environmental Impact Statement (FSEIS), the Final Regulatory Flexibility Analysis (FRFA), and the Record of Decision (ROD) may be obtained from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *peter.hood@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone 727–824–5305; fax 727–824–5308; e-mail *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish and shrimp fisheries of the Gulf of Mexico are managed under their respective FMPs (Reef Fish FMP and Shrimp FMP). The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 26, 2007, NMFS published a notice of availability of Amendment 27/14 and requested public comments (72 FR 41046). On October 23, 2007, NMFS published the proposed rule to implement Amendment 27/14 and requested public comments (72 FR 59989). NMFS partially approved Amendment 27/14 on October 19, 2007. The rationale for the measures in Amendment 27/14 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Partial Disapproval of Amendment 27/14

NMFS disapproved the proposed management measure that would have assumed a 10–percent reduction in post-hurricane recreational fishing effort and landings as it related to total allowable catch (TAC) levels and associated management measures. NMFS determined that a 10–percent reduction in recreational fishing effort and landings was not based on the best scientific information available as required by national standard 2 of the Magnuson-Stevens Act, and was inconsistent with Council's stated objective to reduce fishing mortality and rebuild the red snapper stock. As a result of this disapproval, this final rule establishes a red snapper recreational season that remains open from June 1 through September 30 each year rather than the May 1 through October 15 season that would have resulted if the assumption of a 10–percent reduction in recreational fishing effort and landings had been approved.

Delayed Effectiveness for Requirement of Circle Hooks, Dehooking Devices, and Venting Tools

NMFS is delaying, until June 1, 2008, the effectiveness of the requirements in § 622.41(m) to use non-stainless steel circle hooks when using natural baits to fish for Gulf reef fish and to use dehooking devices and venting tools when fishing for Gulf reef fish in the Gulf exclusive economic zone (EEZ). This delay in effectiveness will provide additional time for manufacturers and retail outlets to prepare for the demand for these newly required products and will provide more time for commercial and recreational fishers to comply with these new gear requirements.

Comments and Responses

Following are the public comments received on Amendment 27/14 and on the proposed rule along with NMFS' responses to those comments.

Comment 1: Fishing conditions have improved, especially in the northeastern Gulf of Mexico, and there is no need to institute reductions in TAC, the bag limit, or the recreational season. In addition, artificial reefs and reductions in shrimp trawl effort have improved red snapper fishing.

Response: The red snapper stock assessment evaluated the status of the population both east and west of the Mississippi River delta. The assessment found the eastern portion of the population to be in better condition than the western portion, and that stock condition was improving. This increase in population abundance is likely the reason fishermen are seeing an improvement in fishing conditions. However, the red snapper population in both the eastern and western Gulf of Mexico is still considered overfished and undergoing overfishing; therefore, management measures are needed to allow the stock to rebuild by 2032.

Based on the red snapper rebuilding plan adopted by the Council in 2005, overfishing must end between 2009 and 2010. Ending overfishing and recovery of the red snapper population is contingent on reducing mortality in both the directed commercial and recreational fisheries and bycatch in the shrimp trawl fishery. More restrictive management measures are needed across all of these fisheries to constrain harvest and bycatch mortality.

The reduction in the directed fishery's TAC accounts for decreases in shrimp trawl effort. These decreases in shrimp trawl effort are expected to improve survival of juvenile red snapper. However, as mentioned above, fishing mortality in the directed fishery must also be reduced to rebuild red snapper.

Artificial reefs are known to improve recreational fishing opportunities for red snapper, and may increase red snapper productivity. Conversely, artificial reefs serve as fish attracting devices and, therefore, increase fishing mortality. Artificial reefs were discussed as one of several possible mechanisms to account for high stock recruitment during the Southeast Data, Assessment, and Review (SEDAR) process. Regardless, recreational fishing mortality is still higher than needed to rebuild the population and manage it at sustainable levels.

Comment 2: High fuel prices and the after-effects of the 2005 hurricanes have reduced charter fishing operations and private recreational fishing effort, and, thus, little or no further action needs to be taken to constrain recreational red snapper harvest. Data used to analyze recent trends in effort and landings are questionable. Differences in regulations between state and Federal waters may have influenced the 2007 Marine Recreational Fisheries Statistical Survey (MRFSS) landings data, particularly with how anglers report where fish were harvested, causing an artificial spike in red snapper landings.

Response: The 2005 hurricane season was the busiest and costliest on record, resulting in significant physical and economic damage to coastal communities. In revising the red snapper rebuilding plan and developing management measures to constrain directed harvest, the Council selected as their preferred alternative the assumption of a continuing 10–percent reduction in post-hurricane directed fishing effort, even though the Council's Science and Statistical Committee (SSC) did not support the assumption that there would be a continuing reduction in fishing effort.

Similarly, the Southeast Fisheries Science Center (SEFSC) concluded the available data do not support the assumption of a 10–percent reduction in overall effort in the directed fishery

following the 2005 hurricane season. The SEFSC based this determination on weighted 2006 effort levels, which were about 99 percent of the 2000–2004 average effort levels. The SEFSC indicated mixed changes occurred in recreational effort showing reductions in some sectors (particularly private vessels), but increases in other sectors (charter vessel and headboat). Increases in red snapper fishing efficiencies and landings, particularly off western Florida and Louisiana between 2005 and 2006 were also observed. The SEFSC also noted a fluctuating, but gradually increasing, trend in recreational effort commensurate with increases in the population. Given that private effort in state waters and for-hire effort in Federal waters are increasing, it is unlikely private effort in Federal waters will remain at current levels.

Preliminary MRFSS data through October 2007 indicate landings exceeded the 2007 recreational quota of 3.185 million lb (1.445 million kg), even under a reduced red snapper bag limit in Federal waters of two fish. Preliminary 2007 MRFSS landings were similar to or higher than landings in previous years during comparable time periods. There is no indication effort has been reduced to a point that would prevent recreational anglers from meeting or exceeding the annual quota (See also the response to Comment 3 regarding trip information). Even if these preliminary MRFSS landings are overestimated, recreational red snapper landings are likely to exceed the specified 2007 quota given that headboat red snapper landings and Texas Parks and Wildlife private and charter landings are not included in the preliminary 2007 landings estimate.

Comment 3: Economic impacts of the recreational quota reductions and associated measures on the charter industry and associated businesses and communities are underestimated.

Response: Best available survey and modeling results indicate that relatively few trip cancellations are expected to occur as a result of this action. Most survey respondents indicated that when faced with a reduced or zero red snapper bag limit, they would either continue fishing for red snapper or fish for another species. Fishing for other species may generate distributional effects (i.e., the trips may occur from different ports, modes, or seasons, resulting in one port or entity or season losing business while another gains). These distributional effects, however, cannot be predicted with current data.

Preliminary data through August 2007 do not support claims of widespread reductions in charter business as a result of the interim measures reducing the recreational quota and bag limit. Because the recreational red snapper fishery in Federal waters did not open until late April, data for May through August 2007 were examined. During this period, approximately 461,000 trips were taken by recreational anglers on charterboats in the Gulf from Florida through Louisiana (data for Texas are not collected in the same data program and are not available). This compares to an average of approximately 403,000 angler trips on average per year for the previous 3 years, 2004 through 2006. Omitting 2006 data on the assumption that effort in that year was reduced due to lingering effects of the 2005 hurricanes, the annual average for 2004 through 2005 was only slightly greater at approximately 405,000 angler trips. Thus, while available data cannot address claims of severe economic losses by individual entities, preliminary 2007 data do not support contentions of widespread industry harm. Consistent with the projections, while effort may have shifted to other species or other charter businesses, widespread loss of effort as a result of the interim quota and bag limit reduction is not apparent. Although the management measures in the final rule are more restrictive than the interim measures, widespread effort declines are similarly not expected.

Comment 4: A total mortality limit should be set for both commercial and recreational red snapper fisheries. This limit would include all fish killed for each sector. A sector that can reduce dead discards would see a commensurate increase in allowed landings.

Response: Establishing a total mortality limit was not considered in Amendment 27/14. While this concept would provide incentives for the respective fisheries to minimize dead discards, better estimates of discard mortality are needed. Only a short time series of commercial discard data was available for the most recent red snapper stock assessment and the data workshop panel believed recreational discards were much higher than estimated by MRFSS. For these reasons, available recreational and commercial discard data were not used in the assessment. Instead, discards were assumed to be due to the minimum size limit and were estimated from the predicted length composition of the catch. Because currently the only estimates of dead discards are produced from assessment model projections, it is not possible at this time to monitor total mortality limits on a real-time basis.

Comment 5: Greater reductions in discard mortality in the commercial and recreational directed fisheries are needed to maximize both short-term and long-term yields.

Response: Reductions in red snapper regulatory discards are needed in all sectors of the directed red snapper fishery for the stock to recover over the long term and to reduce overfishing in the short term. If a 74–percent reduction could be achieved in directed fishery discard mortality, TAC could have been set at 7 million lb (3.2 million kg), and future TACs could be set higher. This level of reduction is not possible at this time given the available tools (e.g., gear restrictions, bag limits, size limits, etc.) managers have to limit bycatch. However, the rule does implement measures to reduce red snapper discard mortality. This rule sets the commercial size limit at 13 inches (33 cm) total length (TL) for the commercial fishery, requires the use of non-stainless steel circle hooks when fishing for reef fish with live bait , and requires specific venting tools and dehooking devices for both the commercial and recreational fisheries. Reductions in the commercial size limit are estimated to reduce dead discards by 40 to 60 percent and allow the stock to recover faster. It is unknown to what extent a requirement of circle hooks, venting tools, and dehooking devices will have in reducing bycatch mortality when harvesting reef fish, but all these gears have been shown to increase the survival of released fish.

Comment 6: Reducing the commercial minimum size limit will enhance user conflict and is not fair and equitable. Recreational size limits should also be reduced to lower discard mortality. The commercial size limit should be further reduced to 12 inches (30.5 cm) TL, or no size limit should be implemented, to allow the stock to recover more quickly.

Response: Scientific analyses suggest both the red snapper stock and commercial fishery participants would benefit from reducing the commercial minimum size limit. This is because of high commercial discard mortality rates that nullify any benefit derived from protecting smaller size fish. However, reducing the minimum size limit in the recreational fishery would not benefit the red snapper stock or stock recovery in the long-term. The discard mortality rate of the recreational fishery is 15 to 40 percent whereas discard mortality rates for commercially caught red snapper are estimated to range between 71 and 82 percent. Thus, smaller fish caught and released by the recreational fishery are more likely to survive and help contribute to stock recovery. By contrast, reducing the commercial

minimum size limit to 13 inches (33 cm) TL will allow previously discarded fish to be retained and counted toward the quota. In addition, long-term TACs associated with lower recreational minimum size limits are expected to be slightly less than TACs with a 16–inch (41–cm) TL minimum size limit. Therefore, reducing the minimum size in the recreational fishery will not maximize yield over the long-term.

Although having no commercial minimum size limit was estimated to allow the stock to rebuild slightly faster than with a 13–inch (33–cm) TL size limit, the difference in rebuilding is small. Also, if the commercial minimum size limit were eliminated, while the recreational sector operates under a minimum size limit, the potential for competition and conflict between recreational and commercial fishers would have increased. The Council recommended, and NMFS approved, a 13–inch (33–cm) TL minimum size limit because it will have positive biological impacts and will reduce the potential for user conflicts between the commercial and recreational sectors relative to the alternative of eliminating the commercial minimum size limit.

Comment 7: The recreational fishing season should be changed. Suggested seasons included a separate spring/early summer season and late summer/fall season, shifting the season forward or backwards, or weekend openings. In addition, comments suggested the commercial fishery should be held to the same season as the recreational fishery.

Response: The Council evaluated numerous recreational fishing seasons including seasons with weekend openings. Ultimately, the Council determined it needed to preserve a core summer recreational fishing season. Comments from the public have indicated keeping the season open as long as possible is more preferable to more liberal bag or size limits. Therefore, given a bag limit of two fish, a zero-bag limit for the captain and crew of for-hire vessels, and a 16–inch (41–cm) TL minimum size limit, the Council recommended, and NMFS approved, the longest season that could be achieved and still cover the core summer fishing season. This season would be from June 1 to September 30 (122 days).

NMFS did not evaluate seasonal closure alternatives for the commercial red snapper fishery because fishery landings are managed in-season through an individual fishing quota (IFQ) program. This program was implemented in part to eliminate the derby fishery conditions that had developed in response to short fishing seasons. IFQ programs effectively control total annual harvest by enabling fishery managers to track and limit the landings of each individual program participant.

Comment 8: Recreational measures for the eastern and western Gulf of Mexico recreational red snapper fisheries need to be different because of differences in how the fisheries operate.

Response: The Council considered different regulations between the eastern and western Gulf for the recreational fishery. Measures considered primarily examined different seasons; however, these options were not selected, in part, because of enforcement problems and angler confusion in areas around where the line of demarcation between the eastern and western Gulf is drawn.

Comment 9: The two-fish bag limit is too restrictive. Either the four-fish bag limit should be maintained, or the bag limit should be the first four to six fish landed.

Response: In managing the recreational fishery such that harvest is constrained to the recreational quota, NMFS has employed bag limits, size limits, and seasonal closures. The combined effect of reducing the recreational bag limit from four to two fish, reducing the captain and crew bag limit for for-hire vessels, and reducing the season to a June 1 to September 30 should control effort sufficiently to ensure the recreational fishery remains within the 2.45 million-lb (1.11 million-kg) quota. To maintain a four-fish bag limit or institute some other bag limit greater than two fish, the fishing season would need to be further reduced. While some fishermen commented they would prefer to maintain the bag limit over season length, the majority of testimony from fishermen suggested they would prefer a reduction in the bag limit rather than a reduction in season length.

Comment 10: The economic and social value of both recreational and commercial sectors needs to be considered in setting TAC. Current allocations of TAC should be changed to reflect these differences. The recreational fishery needs to be further divided into a for-hire and private angler allocation.

Response: This rule is intended to reduce the red snapper catch, bycatch, and discard mortality in the reef fish and shrimp fisheries, end overfishing of red snapper by 2010, and rebuild the red snapper stock by 2032. Therefore, addressing allocations is outside the scope of this rule. However, the Council is developing an amendment to address the allocation of different reef fish species for recommendation to NMFS and may include red snapper.

Comment 11: Requirements for dehooking devices and venting tools should be standardized due to differences in performance of differently designed tools and other devices should be allowed. The effective date for specific fishing gear should be delayed to allow the fishing gear industry time to provide products to the public. The requirement for circle hooks creates an unfair burden on fishermen and causes increases in gut hooking.

Response: This rule provides specific details regarding the configuration of both dehooking devices and venting tools, as well as their use. The rule will require at least one dehooking device on a reef fish vessel, and the device must be able to remove hooks embedded in Gulf reef fish with minimum damage. For the venting tool, the rule will require at least one venting tool aboard a vessel, and the tool must be used to deflate the swim bladders of Gulf reef fish to release the fish with minimum damage. Gear types evaluated for this action were commercially available and easily obtainable by fishermen. Weighted release devices identified as alternative gear in comments on the rule are not commercially available at this time.

Additional public comments requested that the implementation of the circle hook requirement be delayed to allow manufacturers, distributors, and retail outlets sufficient time to produce and distribute the hooks and ensure adequate stock is available to meet fisherman demand. Additional time is reasonable to allow retailers to acquire sufficient stock and fishermen to come into compliance with these new gear requirements. Therefore, this final rule delays the effective date of these new gear requirements until June 1, 2008.

Circle hooks do not increase gut hooking in reef fish. As described in Amendment 27/14, circle hooks tend to embed in the corner of a fish's mouth, unlike J-hooks which are more likely to be swallowed. Swallowed hooks can cause internal damage leading to mortality. Because circle hooks tend to embed in the jaw, they are also easier to remove, causing the fish less stress when released and enhancing survival. Requiring the use of non-stainless steel circle hooks will allow a hook to degrade over time, providing a fish with a greater chance for survival.

Comment 12: There is a lack of enforcement of commercial fishing vessels, which allows illegal harvest of red snapper and contributes to overfishing.

Response: NMFS law enforcement officials work cooperatively with other Federal and state agencies to reduce and prevent illegal activity. The recently implemented red snapper IFQ program was designed with enforceability in mind and with full input by Federal and state law enforcement officers. The red snapper IFQ program is the best monitored fishery in the Gulf. It incorporates a vessel monitoring system, pre-departure and advance landing notification requirements, a dockside monitoring component, and real-time data management to account for all red snapper landed including a checks-and-balances system matching quota allocations with fish purchased by dealers.

Comment 13: Closures would preclude the shrimp fishery from achieving optimum yield (OY), and hence limit economic opportunities for the fishery.

Response: A restriction on effort in the mid-shelf region, which only affects the ability of the fishery to utilize a portion of the shrimp grounds for a limited time frame during the year, should not preclude the fishery from having the opportunity to achieve OY, as currently defined, on a continuing basis. Should it be necessary to implement a time-area closure to restrict fishing mortality on red snapper, shrimp fishing effort can shift either inshore or offshore of the closed areas with highest red snapper abundance. However, currently the shrimp fishery is adversely affected by external economic factors, such as increased fuel prices and depressed ex-vessel prices, which are constraining fishing effort.

If economic conditions should improve and effort increase in the shrimp fishery, especially in the mid-shelf region where juvenile red snapper are abundant, then a time-area closure might have to be implemented to maintain the 74–percent shrimp trawl bycatch mortality reduction target. If a closure was implemented for an extended period of time, especially a closure concurrent with the Texas Closure, the likelihood of achieving OY might be decreased. However, the Council and NMFS could take subsequent action to address that problem if it occurred. Moving the fishery into shallower water would lead to catches of smaller shrimp, which could result in reduced profits. However, such an extended closure, or an expansion of the fishery, is not expected in the near future. Alternatively, if more efficient bycatch reduction devices (BRDs) are developed in the future and provide better reductions in juvenile red snapper mortality, time-area closures could be reduced. This could then allow the fishing mortality target to be achieved while simultaneously allowing effort to increase to a level that increases the likelihood that OY would be caught.

Given the above, the likelihood of significant adverse economic consequences resulting from a shrimp fishery area closure is low. The proposed bycatch mortality reduction target is allowed to decrease through time consistent with the framework procedure if supported by the best available scientific information. This would further reduce the chance the shrimp fishery would exceed its bycatch target. The long-term economic benefits associated with the proposed action are expected to outweigh the short-term adverse economic impacts that would result from fishing effort restrictions.

Comment 14: Effort shifts to other areas because of closures will shift bycatch problems to other benthic species.

Response: Insufficient information is available to assess the differences in the quantity and species composition of bycatch on a scale that would allow estimation of differential impacts to marine species. Seasonal area closures are intended to achieve a level of fishing mortality reduction in red snapper. Seasonal closures that lead to relocation of effort by the shrimp fleet to nearshore waters would most likely increase the level of other finfish bycatch. The ratio of finfish biomass to shrimp biomass is often twice as high for nearshore waters as it is for offshore waters. However, populations of many of the common species, such as Atlantic croaker, spot, and longspine porgy, are less susceptible to the adverse effects of shrimp trawling because they are short-lived, and have high natural mortality rates.

Comment 15: The rule does not reflect the Council's intent that the target-reduction of shrimp trawl bycatch mortality of red snapper be phased down from 74 percent of the benchmark years of 2001–2003, to 67 percent in 2011, and thereafter, reduced as necessary, to achieve the target goal of 60 percent by 2032.

Response: This rule allows NMFS the flexibility to modify the mortality reduction target over time via appropriate rulemaking, based on new information and analyses. The preferred alternative selected by the Council in Amendment 27/14 illustrates the Council's intent to adjust the targets over time to appropriate levels while maintaining the red snapper rebuilding schedule. As stated in the amendment, the specific reduction target values identified in the Council's preferred alternative may not be appropriate in the future following new assessments and scientific advice, much like future adjustments to TAC in the directed fishery. Nevertheless, any future adjustment would need to be made through the FMP framework procedures established in this rule. The framework procedure provides the NMFS Southeast Regional Administrator authority to adjust the target reduction level consistent with the red snapper rebuilding plan and the findings of subsequent stock assessments via appropriate rulemaking.

Comment 16: The shrimp trawl fishery is not being constrained sufficiently through this rule, or is being constrained too much. Relaxation of the bycatch targets that occur later in the rebuilding plan could allow excessive bycatch by the shrimp fishery.

Response: This rule provides a procedure to constrain shrimp trawl bycatch mortality on red snapper to a level that is 74 percent less than the benchmark years of 2001–2003. The rule provides for adjustment of the target level reduction, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. These provisions ensure that any restrictions on shrimp trawl bycatch of red snapper will be consistent with the red snapper rebuilding plan and the best scientific information available.

In the near future, minimal measures to manage shrimp fishing effort in relation to the target red snapper bycatch mortality reduction goal may be needed. This is because the economic downturn in the shrimp fishery, coupled with increased fuel costs and hurricane damage to vessels and infrastructure, reduced effort from the benchmark years by nearly 60 percent in 2005 and 65 percent in 2006. Had the shrimp trawl fishery been operating at levels associated with the benchmark years, substantial action would have been required and proposed measures would have had greater adverse economic effects. Preliminary effort estimates for 2007 indicate the shrimp fishery is operating below the target level.

Allowing the shrimp bycatch reduction target to be reduced as the red snapper stock rebuilds will allow bycatch and bycatch mortality of red snapper to increase. However, any such increases would be constrained to levels consistent with the red snapper rebuilding plan and best available scientific information. The Council and NMFS believe it is appropriate to

provide for reduction of the shrimp bycatch mortality target, so that the shrimp fishery could receive some benefit from stock rebuilding. Holding the shrimp bycatch mortality constant would not provide any benefits to the shrimp fishery, while the directed red snapper fishery would benefit from larger TACs. In making any future adjustments to the target bycatch goal, NMFS will ensure bycatch is being minimized to the extent practicable.

To ensure red snapper bycatch does not increase above levels specified in Amendment 27/14, the rule establishes a framework and actions for NMFS to take should the target not be met. These are summarized in the above comment.

Comment 17: The final version of the amendment submitted for Secretarial review included updated shrimp landings information not available for the public hearing draft of the amendment. This lack of information was misleading regarding the Council's final choice of a preferred alternative, especially regarding the potential social and economic impacts of a closure. The text in the amendment is confusing in regard to how the revised BRD criterion would assist in reducing red snapper fishing mortality to achieve the reduction target. The document indicated an additional 10–percent reduction in fishing mortality on juvenile red snapper would be achieved through the certification and use of BRDs that are more efficient than the industry-standard Fisheye BRD. Conversely, another section of the document suggested there would be minimal additional reduction benefits from BRDs expected in the short-term.

Response: Updated information for 2006 indicated red snapper fishing mortality attributable to the shrimp fishery was 65 percent less than the benchmark years, and not 72 percent as noted in the public hearing draft. The updated shrimp effort data and possible implications were brought to the Council's attention at their June 2007 meeting prior to the Council's approval of the amendment for review by the Secretary. The public hearing draft of Amendment 27/14 contained the most recent information available at the time. This text was clear to point out the 2006 shrimp effort estimates were preliminary and based on two of three trimesters of data. If those estimates held true, the shrimp fishery would be near the 74 percent reduction goal.

With respect to the information on bycatch reductions from BRDs, both statements are accurate and are not contradictory. Additional bycatch mortality reduction is expected from the introduction of new BRDs for the fishery under a pending revision to the certification criterion for BRDs. Recent evaluations of the most commonly used BRD, the Fisheye positioned forward in the cod end, indicate this BRD is reducing fishing mortality (F) on juvenile red snapper by approximately 11 percent. Based on a proposed new certification criterion to be established in 2008, NMFS expects that new and more effective BRDs will be certified for use in the fishery. These new BRDs reduce F on juvenile red snapper by greater than 20 percent; therefore, the new BRDs should double the reduction in F derived from using BRDs. However, the contribution attributable to BRDs is much less than the reductions of F achieved by restricting fishing effort in areas where juvenile red snapper are caught.

Comment 18: The rule does not consider mortality reductions achieved through improved BRDs in the process whereby the SEFSC makes recommendations to the RA in determining the scope and durations of shrimp closed areas. The condensing of the 12 statistical areas into 3 zones will reduce the SEFSC's ability to tailor the geographical scope of the time-area closures.

Response: The 74–percent reduction target in shrimp trawl bycatch mortality on red snapper from the 10–30 fathom area required by the red snapper rebuilding plan is based on total bycatch reduction. This includes both reductions in mortality from reduced fishing effort as well as reductions obtained from BRDs.

The three shrimp zones identified in this rule were developed to identify the geographical scope of the 10–30 fathom area of statistical zones 10–21 that could be closed to shrimp fishing should a closure be needed. The Texas zone corresponds to the area where the cooperative 60-day seasonal closure with the State of Texas to protect small brown shrimp emigrating from bay nursery areas occurs. The Louisiana and Eastern zones identify the rest of the area to be managed under the framework, but were split because of the lack of trawlable 10–30 fathom bottom in Federal waters between Louisiana and Mississippi. Because the rule states ''the RA will, if necessary, establish a seasonal area closure of the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (l)(2) through (l)(4),'' the closure could apply to all or a part of one or all three geographic zones. The extent of these closures would be based on the SEFSC's assessment.

Comment 19: The shrimp assessment conducted by the SEFSC and framework procedures to set time and area closures should allow for input from the shrimp fishery.

Response: The SEFSC is dependent on landings and effort data from the shrimp fishery in conducting its assessment. The framework procedure indicates this assessment will be provided to the RA on or about March 1 of each year. At this time, the assessment results will be available to the public. Once the assessment is available, comments may be directed to the RA to use in the RA's determination if a closure is necessary, and if so, to what extent. It is also likely the assessment results will be presented to the Council for their review. Comments could also be introduced at this time when the Council evaluates the RAs decision.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 27/14 is necessary for the conservation and management of the Gulf red snapper fishery and that it is consistent with the Magnuson-Stevens Act, and other applicable laws.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an SEIS for this amendment. A notice of availability for the draft SEIS was published on April 20, 2007 (72 FR 19928). A notice of availability for the final SEIS was published on August 3, 2007 (72 FR 43271).

A FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis, a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The final rule will reduce the commercial quota from 4.65 million lb (2.14 million kg) to 2.55 million lb (1.16 million kg) and the recreational quota from 4.47 million lb (2.06 million kg) to 2.45 million lb (1.11 million kg), reduce the recreational bag limit from four fish to two fish and the bag limit for captain and crew of for-hire vessels to zero, reduce the commercial minimum size limit from 15 inches (38 cm) TL to 13 inches (33 cm) TL, require participants in all Gulf reef fish fishery sectors to use non-stainless steel circle hooks (when using natural baits) and to use venting tools and dehooking devices, provides for seasonal area closures of the Gulf shrimp fishery to reduce red snapper bycatch consistent with Amendment 27/

14's framework procedure, and establishes authority to adjust the target shrimp bycatch reduction and effort levels and time-area closures consistent with the framework procedure.

The purpose of this final rule is to reduce red snapper catch, bycatch, and discard mortality in the directed commercial and recreational fisheries and the shrimp fishery in order to end overfishing for red snapper between 2009 and 2010 and rebuild the stock by 2032 in compliance with the red snapper rebuilding plan.

Several public comments were received on the economic impact of the rule. These comments stated that the economic impacts of the proposed TAC reduction and associated measures on the charter industry and associated businesses and communities were underestimated. Best available survey and modeling results indicate that relatively few angler trip cancellations are expected to occur as a result of this action. Most survey respondents indicated that when faced with a reduced red snapper bag limit, including a zero-fish bag limit, they would either continue fishing for red snapper or fish for another species. Fishing for other species may generate distributional effects (i.e., the trips may occur from different ports, modes, or seasons, resulting in one port/entity/season losing business while another gains). These distributional effects, however, cannot be predicted with current data. Additionally, contrary to the comments, preliminary data through August 2007 do not support claims of widespread reductions in charter business as a result of the interim reduction in the recreational quota and bag limit. Because the recreational red snapper fishery in Federal waters did not open until late April, data for May through August 2007 were examined. During this period, approximately 461,000 trips were estimated to have been taken by recreational anglers on charterboats in the Gulf from Florida through Louisiana (data for Texas are not collected in the same data program and are not available). This compares to an average of approximately 403,000 angler trips per year for the previous 3 years, 2004 through 2006. Omitting 2006 data on the assumption that effort in that year was reduced due to lingering effects of the Fall 2005 hurricanes, the annual average for 2004 through 2005 was only slightly greater, at approximately 405,000 angler trips. Thus, while these results do not address, and available data cannot address, claims of severe economic loss by individual entities, preliminary 2007 data do not support contentions of widespread industry harm. Consistent with the projections, while effort may have shifted to other species or other charter businesses, a widespread reduction in effort as a result of the reduced interim recreational quota and bag limit is not apparent. The management measures in the final rule are more restrictive than the interim measures, i.e., while the bag limit would remain at the interim 2–fish bag limit, a lower quota results in a shorter open season. However, because anglers indicated they would generally continue to fish under a lower bag limit, including a 0–fish limit, widespread effort declines are similarly not expected. For these reasons, no changes were made in the final rule as a result of these comments.

Additional public comments requested that the implementation of the circle hook requirement be delayed to allow manufacturers, distributors, and retailers sufficient time to produce and distribute the hooks and ensure adequate stock is available to meet fisherman demand. NMFS has revised this final rule to delay the effective date of these new gear requirements until June 1, 2008.

The management actions considered in this final rule are expected to affect all vessels that operate in the commercial red snapper fishery, all vessels that have a Federal reef fish for-hire permit, and all dealers and processors that handle product from these fisheries. Although this final rule contains actions that pertain to the commercial shrimp fishery, these actions are not expected to impose any direct adverse impacts on the shrimp fishery or associated entities.

An IFQ program was implemented January 2007 for the commercial red snapper fishery. Summary data on the fleet economics under this program are not yet available. Prior to the implementation of the IFQ program, however, 136 entities held Class 1 licenses that allowed a commercial vessel trip limit of up to 2,000 lb (907 kg) of red snapper and 628 entities held Class 2 licenses that allowed a trip limit of up to 200 lb (91 kg) of red snapper. Between 2002 and 2004, the top 50 red snapper vessels in terms of landings harvested 2.77 million lb (1.26 million kg) of red snapper, on average, or 64 percent of the industry total. Vessels ranked 51 to 131 harvested 1.29 million lb (0.59 million kg), on average, or 30 percent of the industry total for the same period. Thus, the top 131 red snapper vessels accounted for approximately 94 percent of the total industry red snapper landings. Red snapper are mainly harvested by fishermen using vertical-line gear. These fishermen accounted for approximately 90 percent of commercial red snapper Gulf harvests, on average, between 2002 and 2004.

Average annual gross receipts (2004 dollars) and net income (gross receipts minus all costs) per vessel vary by gear type, area fished, and volume of catch. High-volume vessels using vertical lines averaged gross receipts and net income of $110,070 and $28,466 in the northern Gulf, but only $67,979 and $23,822 in the eastern Gulf. Low-volume vessels using vertical lines averaged gross receipts and net income of $24,095 and $6,801 in the northern Gulf, but $24,588 and $4,479 respectively in the eastern Gulf. Vessels using bottom longlines averaged gross receipts and net income of $116,989 and $25,452 for high-volume vessels, but only $87,635 and $14,978 respectively for low-volume vessels.

The current fleet permitted to operate in the Gulf reef fish for-hire sector is estimated to be 1,625 vessels. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average charterboat is estimated to generate $76,960 in annual revenues and $36,758 in annual profits, whereas the appropriate values for the average headboat are $404,172 and $338,209, respectively.

The measures in this final rule are also expected to affect fish dealers, particularly those that receive red snapper from harvesting vessels. A Federal permit is required for a fish dealer to receive reef fish from commercial vessels, and there are 227 dealers currently permitted to buy and sell reef fish species. All reef fish processors are included in this total because all processors must be dealers. Most of these dealers are located in Florida (146), with 29 in Louisiana, 18 in Texas, 14 in Alabama, 5 in Mississippi, and 15 in states outside the Gulf. In addition, vessels identify the dealers who receive their fish on logbook reports. Commercial reef fish vessels with Federal permits are required to sell their harvest only to permitted dealers. From 1997 through 2002, on average, 154 reef fish dealers actively bought and sold red snapper. These dealers were distributed around the Gulf as follows: 7 in Alabama, 96 in Florida, 22 in Louisiana, 7 in Mississippi, and 22 in Texas. On average, Florida dealers purchased approximately $1.8 million of red snapper, followed by Louisiana ($1.4 million), Texas ($1.3 million), Mississippi ($174,000), and Alabama

($88,000). These dealers may hold permits for multiple fisheries, but it is not possible to determine what percentage of their total business comes from the red snapper fishery.

Approximately 2,000 vessels are expected to be issued a shrimp moratorium permit, which has been required to operate in the Gulf commercial EEZ shrimp fishery since March 26, 2007. Economic profiles of these vessels are not available at this time. Prior to implementation of the moratorium permit, approximately 2,666 vessels were identified as qualifying for the permit based on historical participation in the fishery. The following description of the shrimp fleet is based on an assessment of these qualifying vessels.

The average annual gross revenue (all harvest species) per qualifying shrimp vessel in 2005 was approximately $116,000, while the comparable figure for qualifying vessels active in the Gulf shrimp fishery, i.e., vessels with recorded shrimp landings in 2005, was approximately $152,000. In the same year, the maximum annual gross revenue from shrimp by a vessel was approximately $757,000 for both qualifying and active qualifying vessels, whereas the maximum annual gross revenue for all harvest species was approximately $1.89 million by an inactive qualifier and $757,000 for an active qualifier. According to recent projections, on average, Gulf EEZ commercial shrimp vessels are experiencing a -33 percent rate of return (net revenues/total fixed and variable costs). These economic losses were projected to continue until 2012.

In 2005, 609 dealers were identified operating in the commercial shrimp fishery. Employment information for this sector is not available. In 2005, 60 processors in the shrimp fishery were identified, employing approximately 3,400 persons, or an average of 56 employees per entity. The maximum number of employees for a shrimp processor in 2005 was 353.

The Small Business Administration (SBA) defines a small business in the commercial fishing industry as an entity that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has total annual average receipts not in excess of $4.0 million annually (NAICS codes 114111 and 114112, finfish and shellfish fishing). For for-hire vessels, these same criteria apply except that the average annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries). For seafood processors and dealers, the SBA uses an employee threshold rather than a receipts threshold. The threshold is 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide for a seafood processor and 100 or fewer persons for a seafood dealer.

Some persons/entities are known to own multiple vessels (i.e., fleet operations) in the commercial red snapper fishery and in the commercial reef fish fisheries in general, but the extent of such operations is unknown. The maximum number of reef fish permits reported owned by the same person/entity is 6 permits. Additional permits and the revenues associated with those permits may be linked to an entity through affiliation rules, but such affiliation links cannot be made using existing data. Further, a definitive determination of whether any commercial entity would be considered a large entity cannot be made using average revenue information. However, since the average total revenue in the commercial red snapper fishery between 2002 and 2004 was $11.652 million, given the number of license holders in the fishery is 764, the summary statistics and the maximum number of permits owned by a single person/entity provided above, NMFS determined that all commercial reef fish harvest entities that will be affected by this final rule are small entities.

Fleet operations also exist in the for-hire sector, with at least one entity reported to hold 12 permits. The bulk of the fleet, however, consists of single permit operations. Thus, based on the average revenue figures above, NMFS determined that all for-hire operations that will be affected by this final rule are small entities.

Average employment per reef fish dealer is unknown. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast is approximately 700 individuals, both part and full time. While all processors must be dealers, a dealer need not be a processor. Further, processing fish is a more labor intensive than buying fish. Therefore, given the employment estimate for the processing sector and the number of dealers that participated in the fishery on average per year from 1997–2002 (154 dealers), NMFS assumed that the maximum number of employees for reef fish dealers and processors are unlikely to surpass the SBA employment benchmarks. Therefore, NMFS determined that all reef fish dealers and processors that will be affected by this final rule are small entities.

As with the other fishery sectors, fleet operations are known to exist in the commercial shrimp fishery, but the magnitude of such cannot be determined using available data. Given the maximum revenue per vessel figures noted above, NMFS determined that all shrimp vessels that could be affected by this final rule are small entities.

Similar to the reef fish industry, processing shrimp is more labor intensive than buying shrimp. Thus, average employment in the shrimp dealer sector is assumed to be less than that in the processing sector. Because the maximum number of employees for a shrimp processor does not exceed the SBA threshold, NMFS determined that all shrimp dealers and processors that could be affected by this proposed rule are small entities.

The red snapper recreational and commercial quota reductions are expected to reduce profits in the for-hire and commercial sectors. In the for-hire sector, declines in profits, approximated by net operating revenue (gross revenue minus operating costs except labor) decreases, are expected due to declines in individual angler trip bookings. Under the 2.45 million lb (1.11 million kg) recreational quota and two-fish bag limit, the for-hire sector is projected to lose approximately $1.1 million in annual net operating revenues per year. It is not possible to accurately estimate the extent to which individual for-hire operations will be affected by the quota reduction. Depending on the geographic location of their operation, level of activity, reliance on red snapper trips, variety of species available, and preferences of their core clientele, some vessels will be impacted more than others. Quantifying the number of vessels that will face the greatest economic losses is not possible with available data. The average impact per vessel will vary inversely with the number of vessels substantially involved in and dependent upon the red snapper fishery. For example, if the expected economic impacts were borne by 10 to 25 percent of the fleet, average losses in net annual operating revenue per vessel would be expected to range from approximately $2,700 to $6,800. These losses still represent an average, however, and individual losses for some vessels will be higher by an indeterminate amount.

The assessment of impacts on for-hire profits was based on the recreational quota and not season length. Although industry comment during the development of the proposed rule indicated that a longer open season was preferable to a shorter season, regardless of total allowable catch, and would result in less economic losses, estimating the differential economic

impacts of season length was not possible with available data. As a result, the estimated reduction in for-hire profits is neutral with respect to season length. If the red snapper season length is a significant factor in for-hire profits, then the estimated $1.1 million losses will understate the impacts of a shorter season by an indeterminate amount.

The commercial red snapper sector is expected to experience reductions in profits, measured by changes in net operating revenue to owners, captains, and crew, as a result of the lower quota specified by the final rule. Some of these losses will be mitigated by the reduction in the commercial minimum size limit. The impact analysis for the commercial red snapper sector assumed the fishery was operating under an IFQ program, which was implemented in January 2007. Under the IFQ, the number of vessels operating in the fishery is expected to decline substantially as quota shares are consolidated. However, since the IFQ program has been operating less than one year, sufficient data on the expected contraction is not yet available to indicate the size and type of fleet that will develop. Therefore, the analysis of the expected impacts of the commercial quota reduction assumed the fleet would contract to homogenous fleets of a specific vessel size and accompanying operational characteristics, with the resultant fleet comprised of either more small vessels (35 ft (10.7 m)) or fewer large vessels (65 ft (19.8 m)).

Under the status quo commercial quota of 4.65 million lb (2.14 million kg), the fleet is projected to contract to between ninety-five 35–ft (10.7 m) vessels or thirty-nine 65–ft (19.8 m) vessels. The average annual net operating revenue per vessel within each vessel size class was estimated at $274,000 and $667,000, respectively. Under the 2.55 million lb (1.16 million kg) commercial quota in the final rule, projected losses in net operating revenues to owners, captains, and crew in the commercial sector are estimated to be approximately $11.5 million. The resultant fleet is projected to consist of between fifty-two 35–ft (10.7–m) or twenty-two 65–ft (19.8–m) vessels, representing a reduction of forty-three 35–ft (10.7–m) vessels to seventeen 65–ft (19.8–m) vessels. For each of these potential fleets, the corresponding average net operating revenue for remaining vessels was estimated at $278,000 and $665,000, respectively. Average short-term net operating revenue losses per vessel are estimated at $121,000 and $295,000 for the 35–ft (10.7–m) and 65–ft (19.8–m) vessel classes, respectively.

The reduction in the commercial quota is also expected to adversely impact dealers and processors that purchase and sell red snapper. Although substantial decreases in revenues collected from domestic red snapper are anticipated, the expected losses to dealers and processors cannot be quantified due to lack of firm-level gross revenues and profit data. To mitigate the adverse economic impacts that will result from the 45–percent decrease in the commercial quota, dealers and processors may increase their reliance on imported snapper and use other reef fish species as substitutes.

The zero-fish captain and crew bag limit while on charter is not expected to affect the profitability of for-hire operations because the sale of recreational reef fish landings is already prohibited. Requiring all persons aboard reef fish vessels to use non-stainless steel circle hooks when using natural baits, venting tools, and dehooking devices is expected to result in minimal impacts on the profitability of small entities because of the current widespread use of circle hooks, their competitive pricing, and the availability of dehooking devices and venting tools for less than $15 each.

The management measures considered in this final rule do not affect the reporting or record-keeping requirements for reef fish and shrimp vessels, dealers, or processors. This final rule does not require additional records or report preparation.

Four alternatives, including the status quo, were considered for the action to set TAC and, thus, establish the recreational and commercial quotas in the red snapper fishery. Three of the alternatives include multiple options and sub-options to manage the recreational fishery under the respective TACs and quotas. The first alternative, the status quo, would not be consistent with assumptions related to expected reductions in directed and bycatch mortality rates and would not result in a sufficient, i.e., greater than 50 percent, probability of the red snapper rebuilding plan's success. If implemented, the status quo alternative would result in drastic TAC and quota reductions in subsequent years and, thus, greater adverse economic impacts during that time in order for the resource to continue on the designated recovery path.

The second alternative to the red snapper TAC would have reduced the TAC to 7.0 million lb (3.175 million kg), with resultant commercial and recreational quotas of 3.57 and 3.43 million lb (1.62 and 1.44 million kg), respectively. This alternative has the potential of generating, depending upon the sub-option selected, lower short-term adverse economic impacts than the final rule. However, a 7.0 million lb (3.175 million kg) TAC is not consistent with the current mortality reduction assumptions and would not provide the necessary greater than 50- percent probability of achieving the rebuilding plan objectives. Like the status quo, this alternative would require greater TAC reductions in subsequent years, thereby generating greater adverse economic impacts over that time than the final rule.

The third alternative to the red snapper TAC would have reduced the TAC to 3.0 million lb (1.36 million kg), with resultant commercial and recreational quotas of 1.53 and 1.47 million lb (0.69 and 0.67 million kg), respectively. This alternative would have reduced the TAC and quotas more than necessary to end overfishing within the specified time period and would be expected to result in an overly restrictive management approach with unnecessary and greater adverse economic impacts than the final rule.

Three alternatives, including the status quo, were considered for the action addressing post-hurricane effort and landings reductions. Although some post-hurricane reduction in effort and landings is demonstrated by available data, the reductions are not consistent across the entire fishery and are not expected to persist. Therefore, the final rule does not assume any post-hurricane effort reduction in the determination of the management measures necessary to limit the recreational sector to its quota. The second alternative would have assumed a 10–percent reduction in post-hurricane effort in the recreational red snapper fishery. This alternative would extend the fishing season and yield greater short term economic benefits than the final rule. However, a 10–percent reduction in effort is not supported by available data, and adopting such an assumption may result in a failure to meet conservation goals, resulting in long-term negative economic impacts relative to the proposed action. The third alternative would have assumed a 25–percent reduction in post-hurricane effort and landings. This alternative would result in a longer season than the final rule and result in greater short-term economic benefits than the final rule. However, a 25–percent reduction is also not supported by available data, and adopting that assumption would be expected to result in a failure to meet conservation goals, resulting in substantial long-term negative economic impacts relative to the final rule.

Two alternatives, including the status quo, were considered for the action to set the captain and crew bag limit. The final rule will allow the recreational red snapper fishing season to remain open 4–16 days longer relative to the status quo. The status quo alternative, which would allow the captain and crew to retain the angler bag limit, would require either a shorter season or a lower bag limit for recreational anglers to achieve the rebuilding goals. These more restrictive measures would be expected to result in greater reductions in trip demand and increased reductions in for-hire profits and angler value than the final rule.

Three alternatives, including the status quo, were considered for the commercial red snapper minimum size limit. The first alternative to the final rule, the status quo, would be expected to result in continued unnecessary bycatch mortality and would not, therefore, meet the Council's objectives. The 13–inch (33–cm) minimum size limit in the commercial sector is expected to result in decreased economic impacts to the fishery and associated industries due to increases in the operational efficiency of commercial vessels and a potential ex-vessel price increase for smaller fish. The third alternative would eliminate the commercial minimum size limit. Eliminating the commercial minimum size limit would increase user conflicts between the commercial and recreational sectors since the recreational sector would have a 16–inch (41 cm) minimum size limit, while the commercial sector would not have any minimum size limit. Further, because no commercial market is currently known to exist for red snapper smaller than 12 inches (30 cm), no additional benefits would be expected to accrue to the commercial sector. Thus, the total economic impacts to the commercial sector of an elimination of the minimum size limit would be expected to be comparable to those of the final rule.

Three alternatives, including the status quo, were considered for the gear requirement action. The two alternatives that contained new gear requirements contained options that specified the fisheries over which the requirements would apply. The final rule will require the use of non-stainless steel circle hooks when using natural baits, and require the use of venting tools and dehooking devices for all participants in the reef fish fisheries in the EEZ of the Gulf of Mexico. The final rule will reduce bycatch and bycatch mortality in the red snapper and reef fish fisheries and contribute to improving the likelihood of success of the red snapper rebuilding plan. This is expected to result in increased long-term economic benefits. The sub-options that reduced the fisheries to which the gear requirements will apply would be expected to result in less reduction in bycatch mortality and lower long-term economic benefits than the final rule. However, in general, little economic impact is expected because of the current widespread use of circle hooks and the low cost of venting/dehooking devices (less than $15 each).

The first alternative to the final gear action would not impose new gear requirements on fishermen and would not, in the short term, result in any direct adverse economic impacts. However, this alternative would not contribute to improving the likelihood of success of the red snapper rebuilding plan. Relative to the final rule, this alternative could result in more severe restrictions on fishery participants in the long run and, thus, generate greater adverse economic impacts.

The second alternative and associated sub-options to the final gear action would specify only a minimum hook size. Compared to the final rule, this alternative would be less effective in reducing bycatch and bycatch mortality. As a result, in the long run, it would be expected to result in smaller economic benefits than the final rule.

Six alternatives, including the status quo, were considered for the bycatch reduction target in the commercial shrimp fishery. The status quo would not establish a bycatch reduction target, would not ensure consistent reductions in bycatch fishing mortality on juvenile red snapper in the shrimp fishery, and would not be consistent with the 2005 SEDAR assessment recommendations to further reduce bycatch fishing mortality rates on the red snapper stock. The final rule incorporates a target reduction of shrimp trawl bycatch mortality on red snapper 74 percent less than the benchmark years of 2001–2003 as specified in the amendment, which is consistent with the red snapper quotas established by final rule, and increases the probability of success of the red snapper rebuilding plan. Establishment of the bycatch reduction target is an administrative action and will not result in any direct adverse economic effects.

The second and third alternatives to the final bycatch reduction target would establish lower reduction targets than the 74–percent target reduction incorporated in the final rule. Like the final rule, these alternatives are not expected to result in direct adverse economic impacts. However, the lower targets do not contribute sufficiently to increasing the likelihood of the success of the red snapper rebuilding plan and could be expected to require further effort reductions, resulting in more severe management measures in the long run. The fourth alternative would, as will the final rule, incorporate a 74–percent reduction in shrimp trawl bycatch mortality on red snapper, but would not specify changes to the target or the method by which the target might be adjusted in the future. Similarly, the fifth alternative would establish a 74–percent reduction in shrimp trawl bycatch mortality on red snapper, but would also explicitly link future adjustments to the bycatch reduction target to red snapper stock assessment updates.

Four alternatives, including the status quo, were considered for the action to potentially establish fishing restrictions for the EEZ shrimp fishery in the Gulf of Mexico if the bycatch reduction target in the fishery is not met. The first alternative to the final rule, the status quo, would not establish potential fishing restrictions for the Gulf shrimp fishery. The status quo would not result in direct or indirect adverse economic impacts because potential restrictions would not be established for the shrimp fishery. However, if effort reductions in the fishery are not sufficient to achieve target goals, this alternative may result in more severe future restrictions and potentially greater adverse economic impacts than the enactment of potential effort restrictions at this time.

The final rule will, if necessary, establish a procedure for implementing a seasonal closure in the 10- to 30–fathom (18- to 55–m) zone of selected areas within statistical zones 10–21 in the Gulf of Mexico via appropriate rulemaking. The closure is intended, when possible, to begin on the same start date as the closure of the EEZ off Texas. This measure will ensure that target reductions in shrimp trawl bycatch mortality are met, is consistent with the red snapper quotas, and will contribute to increasing the likelihood of the success of the red snapper rebuilding plan. Establishment of this procedure is an administrative action and will not result in any direct economic effects. Direct economic impacts will only accrue if, in the future, it is determined that the bycatch reduction target has not been met and a seasonal closure is necessary. The direct economic effects of the closure would be analyzed at that time, as appropriate.

The second and third alternatives to the final action to establish fishing restrictions if the bycatch reduction target in the fishery is not met would also establish a procedure for

implementing seasonal closures, as necessary, in the 10 to 30–fathom (18 to 55 m) zone of selected areas within statistical zones 10–21 in the Gulf of Mexico but would consider alternative time frames for the closures. As with the final rule, this procedure and associated alternatives are administrative in nature and would not be expected to result in any direct economic effects. Direct economic impacts would only accrue if, in the future, it is determined that the bycatch reduction target has not been met and a seasonal closure is necessary. However, compared to the long-term benefits expected to accrue to the red snapper fishery from the final rule, smaller long-term economic benefits to the red snapper fishery would be expected from these alternatives. The greater positive impacts associated with the final rule are attributable to the intended starting date of any potential closure coinciding with the movement of age 1 snapper from shrimp grounds to larger structures.

Two alternatives, including the status quo, were considered for the action to establish a framework procedure to adjust effort in the commercial shrimp fishery. The status quo would not establish a framework procedure and would not support adjusting effort in the commercial shrimp fishery in response to a failure to meet bycatch reduction requirements in a timely and efficient manner. The final rule will allow the Regional Administrator to implement closures based upon annual shrimp effort assessments conducted by the Southeast Fisheries Science Center. This procedure is expected to be the quickest and most efficient approach to establishing closures. Two other options were considered under the second alternative. These options would establish less expedient means of implementing recommended closures. Direct adverse economic impacts are not expected to result from the alternatives included in this action because the establishment of a framework procedure to adjust effort in the commercial shrimp fishery is an administrative action. Direct effects will only accrue if shrimp effort needs to be adjusted. The direct effects of any adjustment will be analyzed at the time such action is initiated, as appropriate.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 23, 2008

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definitions for ''circle hook,'' ''dehooking device,'' and ''venting device'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Circle hook means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

* * * * *

Dehooking device means a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

* * * * *

Venting device means a device intended to deflate the swim bladder of a fish to release the fish with minimum damage.

* * * * *

■ 3. In § 622.34, paragraph (l) is added and the first sentence of paragraph (m) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) Closures of the Gulf shrimp fishery to reduce red snapper bycatch. During a closure implemented in accordance with this paragraph (l), trawling is prohibited within the specified closed area(s).

(1) *Procedure for determining need for and extent of closures.* Each year, in accordance with the applicable framework procedure established in the FMP for the Shrimp Fishery in the Gulf of Mexico (FMP), the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (l)(2) through (l)(4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 74–percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP. The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. The assessment will use shrimp effort data for the most recent 12-month period available and will include a recommendation regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the **Federal Register**. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (l) will begin on the same date and time as the Texas closure unless circumstances dictate otherwise.

(2) *Eastern zone.* The eastern zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°14′	88°57′
B	29°24′	88°34′
C	29°34′	87°38′
D	30°04′	87°00′
E	30°04′	88°41′
F	29°36′	88°37′
G	29°21′	88°59′
A	29°14′	88°57′

(3) *Louisiana zone.* The Louisiana zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	29°09.25′	92°36′
C	28°35′	90°44′
D	29°09′	89°48′
E	28°57′	89°34′
F	28°40′	90°09′
G	28°18′	90°33′
H	28°25′	91°37′
I	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(4) *Texas zone*. The Texas zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	28°44′	95°15′
C	28°11′	96°17′
D	27°44′	96°53′
E	27°02′	97°11′
F	26°00.5′	96°57.3′
G	26°00.5′	96°35.85′
H	26°24′	96°36′
I	26°49′	96°52′
J	27°12′	96°51′
K	27°39′	96°33′
L	27°55′	96°04′
M	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(m)* * *

The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31 and from October 1 through December 31, each year. * * *

* * * * *

■ 4. In § 622.37, paragraph (d)(1)(vi) is removed and paragraph (d)(1)(iv) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(iv) Red snapper -16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(iii) and 13 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

* * * * *

■ 5. In § 622.39, paragraphs (b)(1)(viii) through (b)(1)(x) are removed, and paragraphs (b)(1)(iii) and (b)(1)(v) are revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper -2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch -20.

* * * * *

■ 6. In § 622.41, paragraph (m) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(m) *Required gear in the Gulf reef fish fishery*. For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (m)(1) through (m)(3) of this section.

(1) *Non-stainless steel circle hooks*. Non-stainless steel circle hooks are required when fishing with natural baits.

(2) *Dehooking device*. At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

(3) *Venting tool*. At least one venting tool is required and must be used to deflate the swim bladders of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16–gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45–degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

■ 7. In § 622.42, paragraphs (a)(1)(v) and (a)(3) are removed, and paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Red snapper -2.55 million lb (1.16 million kg), round weight.

* * * * *

(2) *Recreational quota for red snapper*. The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section -2.45 million lb (1.11 million kg), round weight.

* * * * *

■ 8. In § 622.48, paragraph (i) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(i) *Gulf shrimp*. Closed seasons and areas, target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

* * * * *

[FR Doc. E8–1547 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XF34

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the A season allowance of the 2008 total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 25, 2008, through 1200 hrs, A.l.t., January 27, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 8, 2008.

ADDRESSES: You may submit comments, identified by 0648–XF34, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- FAX: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK. Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for

example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on January 22, 2008, and which published in the **Federal Register** on January 25, 2008.

NMFS has determined that approximately 3,069 mt of pollock remain in the directed fishing allowance in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2008 TAC of pollock in Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA for 48 hours, effective 1200 hrs, A.l.t., January 27, 2008.

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) and 679.25(c)(1)(ii) 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 opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 23, 2008.

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.

Without this inseason adjustment, NMFS could not allow the fishery for pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 8, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: January 24, 2008.

Emily H. Menashes

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

[FR Doc. 08–376 Filed 1–24–08; 1:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 19
Tuesday, January 29, 2008

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AO–85–A10; AMS–FV–07–0132; FV08–905–1]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Hearing on Proposed Amendment of Marketing Agreement 84 and Order No. 905

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Agreement No. 84 and Order No. 905 (order), which regulate the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. Four amendments are proposed by the Citrus Administrative Committee (committee), which is responsible for local administration of the order. These proposed amendments would: modify committee representation by cooperative entities; allow additional alternates to represent absent members of the committee to better meet quorum requirements; add authority to conduct committee meetings by telephone or other means of communication; and add authority for marketing promotions, including paid advertising, and production research for fresh Florida citrus. In addition, the Agricultural Marketing Service (AMS) proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing. These proposed amendments are intended to improve the operation and administration of the order.

DATES: The hearing dates are February 12, 2008, 9 a.m. to 5 p.m.; and continuing on February 13, 2008, at 9 a.m., if necessary, in Winter Haven, Florida.

ADDRESSES: The hearing will be held at the Florida Department of Agriculture and Consumer Services, 500 3rd Street, NW., Winter Haven, FL 33881.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 S.W. Third Avenue, Room 385, Portland, Oregon 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Melissa.Schmaedick@usda.gov;* or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Laurel.May@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

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

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

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the committee on May 29, 2007, and submitted to USDA on August 16, 2007. After reviewing the proposals and other information submitted by the committee, USDA made a determination to schedule this matter for hearing. The proposed amendments to the order recommended by the committee are summarized as follows:

1. Reduce committee representation by producers and shippers affiliated with cooperative marketing organizations. This proposal would amend § 905.23, Selection, and would result in conforming changes being made to § 905.22, Nominations.

2. Add authority to allow additional alternates to represent absent committee members at committee meetings to better meet quorum requirements. This proposal would amend § 905.29, Inability of members to serve.

3. Add authority to conduct committee meetings by telephone or other means of communication technology. This proposal would amend § 905.34, Procedure of committees.

4. Add a new § 905.54 to provide authority to establish and conduct research and promotion activities, including paid advertising.

The committee works with USDA in administering the order. These proposals submitted by the committee

have not received the approval of USDA. The committee believes that its proposed changes would improve the operation and administration of the order by reallocating committee membership to better reflect current industry makeup and by fostering greater participation in committee business meetings. The committee also believes that the research and promotional needs of the fresh citrus industry would be better addressed though programs administered under order authority.

In addition to the proposed amendments to the order, AMS proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Citrus Administrative Committee:

Proposal Number 1

3. Amend § 905.22 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 905.22 Nominations.

(a) * * *

(1) * * *

(2) Each nominee shall be a producer in the district from which he or she is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he is a producer. At least two of the nominees and their alternates so nominated shall be affiliated with a bona fide cooperative marketing organization.

(b) * * *

(1) * * *

(2) Nomination of at least two members and their alternates shall be made by bona fide cooperative marketing organizations which are handlers. Nominations for not more than six members and their alternates shall be made by handlers who are not so affiliated. In voting for nominees, each handler or his authorized representative shall be entitled to cast one vote, which shall be weighted by the volume of fruit by such handler during the then current fiscal period.

4. Revise § 905.23 to read as follows:

§ 905.23 Selection.

(a) From the nominations made pursuant to § 905.22(a) or from other qualified persons, the Secretary shall select one member and one alternate member to represent District 2 and two members and two alternate members each to represent Districts 1, 3, 4, and 5 or such other number of members and alternate members from each district as may be prescribed pursuant to § 905.14. At least two such members and their alternates shall be affiliated with bona fide cooperative marketing organizations.

(b) From the nominations made pursuant to § 905.22(b) or from other qualified persons, the Secretary shall select at least two members and their alternates to represent bona fide cooperative marketing organizations which are handlers, and the remaining members and their alternates to represent handlers who are not so affiliated.

Proposal Number 2

5. In § 905.29, redesignate paragraph (b) as paragraph (c), and add a new paragraph (b) to read as follows:

§ 905.29 Inability of members to serve.

* * * * *

(b) If both a member and his or her respective alternate are unable to attend a committee meeting, such member may designate another alternate to act in his or her place in order to obtain a quorum: *Provided,* that such alternate represents the same district and group affiliation as the absent member. If the member is unable to designate such an alternate, the committee members present may designate such alternate: *Provided that,* to the extent possible, the substitute alternate represents the same district and group affiliation of the absent member.

* * * * *

Proposal Number 3

6. Revise paragraph (c) of § 905.34 to read as follows:

§ 905.34 Procedure of committees.

* * * * *

(c) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

* * * * *

Proposal Number 4

7. Add a new § 905.54 to read as follows:

§ 905.54 Marketing, research and development.

The committee may, with the approval of the Secretary, establish, or provide for the establishment of, projects including production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fruit. The expenses of such projects shall be paid by funds collected pursuant to § 905.41. Upon conclusion of each project, but at least annually, the

committee shall summarize the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any project carried out under this section. Also, for each project, the contracting party shall be required to maintain records of money received and expenditures, and such shall be available to the committee and the Secretary.

Proposal Submitted by USDA

Proposal Number 5

Make other such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: January 24, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–362 Filed 1–25–08; 9:15 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2007–0095]

RIN 0579–AC63

Importation of Cattle From Mexico; Addition of Port at San Luis, AZ

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. A new facility for the handling of animals is to be constructed on the Mexican side of the border at the port of San Luis, AZ, that will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required for such cattle under the regulations. We would also amend the regulations to remove provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas. The statutory requirement that limited the admission of those cattle to the State of Texas has been repealed. These proposed changes would make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

DATES: We will consider all comments that we receive on or before March 31, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0095* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0095, 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–2007–0095.

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: Dr. Freeda Isaac, Assistant Director for Animal Import, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–6479.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.436, referred to below as the regulations) governs the importation of ruminants; within subpart D, §§ 93.424 through 94.429 specifically address the importation of various ruminants from Mexico into the United States.

In § 93.426, paragraph (a) states that all ruminants offered for entry into the United States from Mexico must be inspected at the port of entry and found to be free from communicable diseases and fever tick infestation and to not have been exposed to communicable diseases and fever tick infestation. Ruminants found to be affected with or to have been exposed to a communicable disease, or infested with fever ticks, are to be refused entry except as provided in § 93.427(b)(2).

Under § 93.427(b)(2), cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the State of Texas, except that portion of the State quarantined because of fever ticks, either at one of the land border ports in Texas listed in § 93.403(c) of the regulations, or at the port of Santa Teresa, NM, provided that certain conditions are met. Those conditions are spelled out in paragraphs (b)(2)(i) through (b)(2)(v) of § 93.427.

In a proposed rule published in the **Federal Register** (70 FR 67933–67935, Docket No. 05–041–1) on November 9, 2005, we proposed to amend the regulations governing the importation of cattle from Mexico (referred to below as the regulations) by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. We also proposed to amend the regulations to remove the limitation that cattle that have been infested with ticks or tick-borne diseases may only be imported into Texas and that prohibits the movement of such cattle into areas of Texas that are quarantined because of fever ticks.

We solicited comments concerning our proposal for 60 days ending January 9, 2006. We received a total of 11 comments by that date. They were from representatives of the cattle industry, State agriculture and animal health departments, and private citizens. Three of the commenters supported the proposed rule. The remaining commenters were opposed to the proposed rule, citing concerns about importing Mexican cattle, maintaining and staffing the new port, or increasing the risk of spreading bovine piroplasmosis (another name for splenetic, southern, or tick fever) to domestic cattle within Texas or California.

After considering the concerns raised by several of the commenters, on April 13, 2006, we published a withdrawal of the proposed rule (71 FR 19134–19135; Docket No. 05–041–2) pending further analysis of the animal health risks associated with the proposed changes. As part of our evaluation, we prepared a risk assessment. Copies of the risk

assessment may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The risk assessment, titled ''Evaluation of the Risk Associated with Proposed Changes to Rule 9 CFR 93.427(b)(2): Importation of Cattle from States in Mexico Where *Rhipicephalus* (*Boophilus*) spp. Ticks (Fever Ticks) Exist'' (December 2006), evaluates the risks associated with the importation of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases into the tick quarantine zone in Texas and into other States. The risk assessment also examines the importation of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases through the port of San Luis, AZ. We discuss the findings of the risk assessment in further detail below.

Admission Only Into the State of Texas

The limitation that allows the imported cattle admission only into the State of Texas originated in statutory language (21 U.S.C. 104) that, prior to 1993, authorized the Secretary of Agriculture to permit ''the admission into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom.'' However, in 1993, as part of the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182), 21 U.S.C. 104 was amended to state more generally that the Secretary may permit the importation of cattle, sheep, or other ruminants, and swine from Canada and Mexico, effectively removing the restriction that prohibited cattle from moving into States other than Texas. The provisions of 21 U.S.C. 104 were subsequently repealed by the Animal Health Protection Act, which places no specific tick-related restrictions on cattle imported from Mexico. The Animal Health Protection Act provides that the Secretary may prohibit or restrict the importation of animals if necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.

Following the passage of the NAFTA Implementation Act, our permitting procedures were modified to allow cattle that had been infested with or exposed to fever ticks to be moved into States other than Texas under the conditions described in § 93.427(b)(2), but we did not make a corresponding change in the regulations to reflect the statutory amendment. We are, therefore, proposing to make that change in this document.

As stated in the risk assessment, in the past 5 years, Texas and 11 other States [1] have received cattle from States in Mexico where fever ticks exist. If these same States continue to receive Mexican-origin cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases, then the presence of such cattle within States located outside of the permanent tick quarantine zone in Texas would not create a new animal health risk of exposure to tick-borne diseases. It is not expected that the number of cattle imported into States other than Texas or their intended destination would change as a result of this proposed rule.

In addition, our risk assessment documents that average annual temperatures below 20 °C appear to inhibit the reproductive capability of female ticks. These temperatures roughly correspond to those States above latitude 36° N. Of the 12 States currently receiving Mexican cattle, only 5 are located below this line and present a higher risk of establishment of fever ticks. However, as noted above, because it is not expected that the number of cattle imported into States other than Texas or their intended destination would change as a result of this proposed rule, the proposal would not present an additional animal health risk. Thus, we do not believe it is necessary to maintain the restriction in § 93.427(b) that limits the admission of Mexican-origin cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas.

Quarantined Areas in Texas

In order for tick-borne diseases to become established in U.S. cattle, vector ticks are required as intermediate carriers of those tick-borne diseases. In the absence of vector ticks, tick-borne diseases cannot be spread and, therefore, will gradually disappear from an infected herd. However, vector ticks are currently present in the permanent tick quarantine zone in Texas. As stated in the risk assessment, the reproductive capability of female ticks appears to be impaired by temperatures below 20 °C. As these temperatures roughly correspond to those States above latitude 36° N and nearly the entire State of Texas lies below this line, temperatures are favorable for the long-term establishment of fever ticks within the State. In addition, it appears precipitation levels within the tick quarantine zone are also favorable for tick establishment.

As stated in the risk assessment, seroprevalence data collected within Mexican States that export cattle to the United States show that the probability is high that some Mexican-origin cattle imported into the United States will be persistently affected with a tick-borne disease. In addition, although cattle from Mexico that have been exposed to tick-borne diseases or that have been infested with or exposed to fever ticks must meet the conditions listed in § 93.427(b)(2)(i) through (b)(2)(v)—including the requirement for an acaricide dip—before entering the United States, it is presumed that a small number of cattle will continue to harbor live fever ticks despite the required mitigations. This, in addition to the presence of free-ranging wild ruminants such as white-tailed deer, also increases the risk of introducing a tick-borne disease into the quarantined area in Texas. Therefore, we would continue to prohibit the movement of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases into Texas' tick quarantine zone.

Addition of San Luis, AZ, as an Approved Port

The port of San Luis, AZ, is currently listed in § 93.403(c) among the land border ports designated as having the necessary inspection facilities for the entry of ruminants from Mexico. However, as noted previously, the regulations in § 93.427(b) provide that any cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported only through one of the border ports in Texas listed in § 93.403(c) or through the port of Santa Teresa, NM. We are proposing to amend § 93.427(b) to add San Luis, AZ, as a port through which such cattle may be imported.

A new commercial port of entry is to be constructed in San Luis, AZ, approximately 5 miles to the east of the current border crossing; the current crossing will be improved as well and will continue to be used for noncommercial crossings (passenger vehicles and pedestrians). The purpose of the project is to provide more direct access to major transportation routes between the United States and Mexico and to provide higher levels of service to users of the port of entry. As part of this project, the Mexican Government intends to construct facilities to make the movement of cattle from Mexico into the United States less logistically challenging for both exporters and

[1] Alaska, California, Illinois, Iowa, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Oklahoma, and Wyoming.

importers. The number of cattle imported into the United States is not expected to increase as a result of this proposal, as the number of cattle that pass through the San Luis port are expected to come from cattle that would ordinarily pass through other ports of entry.

Based on the information provided to us by the Mexican Government, the new cattle-handling facilities will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required under the regulations for cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases. We will coordinate, as necessary, with the Mexican Government during the construction of the new port facilities and will inspect the new cattle-handling facilities upon their completion to confirm that they are properly equipped to allow for the necessary chute inspection, dipping, and testing of cattle. Any final action on this proposal to add San Luis, AZ, to the list in § 93.427(b) of ports through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported from Mexico will be contingent upon our determination that the necessary facilities are in place.

The risk assessment concluded that the establishment of fever ticks is dependent on temperature and precipitation levels. While the range of temperatures present in the area around the San Luis port appear favorable for establishment of fever ticks, precipitation levels may not be as conducive. For example, Val Verde County, TX, which is within the tick quarantine zone in Texas, has an annual monthly precipitation level of between 0.57 inch and 2.0 inches, whereas San Luis, AZ, experiences between 0.03 inch to 0.7 inch of precipitation monthly. However, moisture from the Colorado River and private wells in the area may create micro-habitats, which could increase the potential for establishment. As stated previously, we do not expect that the addition of San Luis as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States would change the intended destination of Mexican-origin cattle. Currently, Arizona is not one of the States that receive cattle from Mexico, so we do not expect that cattle entering the port of San Luis would remain in Arizona. Likewise, the number of cattle imported into the United States from Mexico is not expected to increase because the additional cattle that would pass through the San Luis port are expected to be cattle that would have otherwise entered the United States through the approved ports of entry in Texas or Santa Teresa, NM.

Therefore, based on our assessment of the risks, we are proposing to amend the regulations by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States and by removing the limitation that cattle that have been infested with ticks or tick-borne diseases may only be imported into Texas. However, we would continue to prohibit the movement of cattle from Mexico into Texas's tick quarantine zone.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), this analysis considers the economic impact of this proposed rule on small businesses, small organizations, and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of proposed rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA. This analysis addresses these IRFA requirements.

For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, the potentially affected entities are classified as Beef Cattle Ranching and Farming (NAICS 112111). By SBA standards, farms in this category are considered small if annual receipts are not more than $750,000. According to the 2002 Census of Agriculture, of the 664,431 beef cattle farms, 659,009 or 99 percent had annual receipts of less than $500,000 and are therefore considered small. Cattle imported into the United States from Mexico are generally purchased by stocker operations before they are shipped to feedlots. While there is no economic information available on the number, size, or distribution of the stocker operations, it is reasonable to assume they are small, given that 99 percent of beef cattle ranches and farms are considered small.

APHIS does not expect the proposed changes in the regulations would result in a net increase in the number of cattle imported from Mexico. Between the years of 2000 and 2005, an average of 68,223 Mexican-origin cattle entered the United States each year through the port of San Luis, AZ. As a result of the proposed change, we expect that an additional 30,000 to 50,000 head of cattle would enter the United States at San Luis, Arizona. These cattle would be cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases that would have otherwise entered through the ports in Texas or through the port of Santa Teresa, NM.

Any positive impacts of the proposed rule on small entities in the San Luis area, such as an increased volume of business for firms that transport cattle, would be matched by business declines for firms operating from the Texas and New Mexico ports. The net positive impact would be for cattle importers that find it advantageous to use the San Luis port. There may also be positive effects at the Texas and New Mexico ports, to the extent that the diversion of cattle to San Luis would reduce operational delays when the demand for imports is beyond the capacity of the facilities. However, APHIS has no information on whether such periods of insufficient capacity have occurred, and if so, how frequently.

The proposed changes would benefit certain cattle operations in the United States by making the importation of cattle from Mexico that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases more readily accessible, and by reducing transport costs from the port of entry. The proposed port of entry for these cattle at San Luis, AZ, would benefit cattle operations to the west of the current ports of entry. Because the cattle would be moved over shorter distances, transport costs would be lower.

APHIS does not have information on the number of entities that would be importing cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases using the San Luis facilities, nor the cost savings that would be realized. We welcome information that the public may offer that would allow the Agency to better determine the number of enterprises that would be affected and the probable magnitude of their cost savings.

There are no significant alternatives to the rule that would accomplish the stated objectives. Because we do not expect there to be a significant economic impact on small entities, significant alternatives were not set

forth. However, APHIS invites public comment on the potential impacts of the proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.427, the introductory text of paragraph (b)(2) is revised to read as follows:

§ 93.427 Cattle from Mexico.

* * * * *

(b) * * *

(2) Cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the United States, except into areas of Texas quarantined because of said disease or tick infestation as specified in § 72.5 of this chapter, either at one of the land border ports in Texas listed in § 93.403(c) or at the ports of Santa Teresa, NM, or San Luis, AZ, provided that the following conditions are strictly observed and complied with:

* * * * *

Done in Washington, DC, this 23rd day of January 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–1533 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29157; Airspace Docket 07–ASO–23]

Proposed Establishment and Removal of Class E Airspace; Centre, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Centre-Piedmont Cherokee County Airport, (PYP), Centre, AL and remove class E airspace at Centre Municipal Airport, Centre, AL, (C22). The operating status of the airport will include Instrument Flight Rule (IFR) operations. This action enhances the safety and airspace management of Centre-Piedmont Cherokee County Airport.

DATES: Comments must be received on or before March 14, 2008.

ADDRESSES: Send comments on this proposal to the Docket Management Facility, U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590; telephone: 1–800–647–5527. You must identify the docket number FAA–2007–29157; Airspace Docket 07–ASO–23, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29157; Airspace Docket No. 07–ASO–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html*. Persons interested in being placed on a mailing list for future NPRM's should contract the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Code of Federal Regulations (14 CFR part 71) to establish Class E5 airspace at Centre, AL. A new airport, Centre-Piedmont Cherokee County Airport (PYP), has been built and will replace Centre Municipal Airport (C22), therefore, the airspace supporting C22 is no longer required. Area Navigation (RNAV)

Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) Runways (RWY) 07–25 has been developed for Centre-Piedmont Cherokee County. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rules (IFR) operations at Centre-Piedmont Cherokee County Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 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 Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 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 establishes Class E airspace at Centre, AL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Centre, AL [Remove]

Centre Municipal Airport, AL

* * * * *

ASO AL E5 Centre, AL [New]

Centre-Piedmont Cherokee County Airport, AL
(Lat. 34°05′24″ N., long. 85°36′36″ W.)

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Centre-Piedmont Cherokee County Airport.

* * * * *

Issued in College Park, Georgia, on December 14, 2007.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–323 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 41 and 141

[Docket No. RM08–5–000]

Revisions to Forms, Statements, and Reporting Requirements for Electric Utilities and Licensees

Issued January 18, 2008.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission (Commission) proposes to amend its financial forms, statements, and reports for electric utilities and licensees, contained in FERC Form Nos. 1, 1–F, and 3–Q. The proposed revisions are the result of comments received in response to the Commission's Notice of Inquiry (NOI) seeking comment on whether revisions to these forms are needed. Based on the comments received, the Commission proposes certain revisions to Forms Nos. 1, 1–F, and 3–Q and seeks comment on other suggestions for changes. These revisions are proposed to ensure that the Commission and the public have sufficient information to assess the justness and reasonableness of public utility rates. The revisions will enhance the forms' usefulness by updating them to better reflect current electric industry markets and provide cost information useful to the Commission and the utilities' customers.

DATES: Comments must be filed on or before March 14, 2008.

ADDRESSES: You may submit comments, identified by Docket No. RM08–5–000, by one of the following methods:

Agency web site: http://www.ferc.gov. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:

Michelle Veloso (Technical Information), Forms Administration and Data Branch, Division of Financial Regulation, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8363, E-mail: *michelle.veloso@ferc.gov.*

Scott Molony (Technical Information), Regulatory Accounting Branch, Division of Financial Regulation, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8919, E-mail: *scott.molony@ferc.gov.*

Jane E. Stelck (Legal Information), Office of Enforcement, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–6648, E-mail: *jane.stelck@ferc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Commission proposes to amend its financial forms, reports, and statements for public utilities [1] and licensees. Specifically, the Commission proposes changes to FERC Form No. 1 (Form 1), Annual report for major electric utilities, licensees, and others; FERC Form No. 1–F (Form 1–F), Annual report for nonmajor public utilities, licensees and others; and FERC Form No. 3–Q (Form 3–Q), Quarterly report of electric utilities, licensees, and natural gas companies. On September 20, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing changes to FERC Form Nos. 2, 2–A and 3–Q, annual and quarterly reporting requirements for interstate natural gas companies.[2] This NOPR pertains only to the financial forms filed by public utilities and licensees. The Commission is proposing these changes to improve the forms, reports and statements to provide, in fuller detail, the information the Commission needs to carry out its responsibilities under the Federal Power Act (FPA) to ensure that rates are just and reasonable, and to provide public utility customers, state commissions, and the public the information they need to assess the justness and reasonableness of electric rates. Public utility customers need ready access to data to make informed assessments regarding the propriety of the rates charged, particularly customers of utilities without formula rates. The NOPR proposes changes that would require public utilities to provide additional information regarding implementing formula rates and affiliate transactions. However, by seeking to improve the Form 1, we clarify that we do not intend to convert the Form 1 into a section 205 rate case filing or into a cost and revenue study. Instead, these improvements will assist interested parties in their evaluation of a utility's rates. Therefore, the revised Form 1 will not be used to limit or change an entity's rights or obligations under the FPA and our regulations. Nor will the revised Form 1 change our obligation to rule on complaints, petitions, or other requests for relief based on a full record and substantial evidence. The Commission seeks comments on the proposed changes as well as on other issues. The proposed effective date for implementation of these changes is calendar year 2009. Accordingly, companies subject to the new requirements would file their new Form 3–Qs beginning with the Form 3–Q for the first calendar quarter of 2009 and their new Forms 1 and 1–F in April 2010 for calendar year 2009. In addition, the Commission proposes to eliminate the filing requirement for public utilities not subject to the Commission's jurisdiction under section 201 of the FPA.[3]

II. Background

2. On September 20, 2007, the Commission issued a NOPR proposing changes to the financial forms filed by interstate natural gas pipeline companies subject to the Commission's jurisdiction.[4] The NOPR followed a financial form review by Commission staff that included meetings with both filers and users of FERC Forms 1, 1–F, 2, 2–A, and 3–Q data in the fall of 2006. As a result of those discussions, the Commission issued a Notice of Inquiry (NOI) on February 15, 2007, which sought comments on the need for changes or additions to the financial information reported in these forms.[5]

3. The Commission received 35 comments from filers and users of the annual and quarterly FERC Forms 1, 1–F, 2, 2–A, 3–Q, 6, and 6–Q, followed by 15 reply comments filed in response to the NOI.[6] After reviewing the comments, the Commission determined that each of the forms, representing different industries subject to the Commission's jurisdiction, merited its own separate review. Accordingly, the NOPR issued on September 20, 2007, addressed only changes, additions, and amendments to the forms applicable to interstate natural gas companies.

4. In this NOPR, we focus on Form 1, Annual report of major electric utilities, licensees and others; Form 1–F, Annual report for nonmajor public utilities and licensees; and Form 3–Q, quarterly financial report of electric utilities, licensees, and natural gas companies.[7] Sections 304, 307 and 309 of the FPA authorize the Commission to collect such data.[8]

5. Form 1, in particular, requires information to be filed on an annual basis by public utilities and certain hydroelectric production sources under the Commission's jurisdiction. Form 1 collects corporate information, summary financial information, and balance sheet and income information, as well as electric plant, sales, operating and statistical data.

6. Since its inception, Form 1 has been amended by the Commission on numerous occasions to address and keep pace with the transformation of the electric industry. In Order No. 529, issued in 1990, the Commission modified Form 1 to improve reporting of bulk power transactions.[9] In 1993, in Order No. 552, the Commission revised the Uniform System of Accounts (USofA) to account for allowances under the 1990 Clean Air Act Amendments, and adopted corresponding reporting schedules for Form 1.[10]

7. In 2002, the Commission issued Order No. 626 which required electronic filing of Form 1 beginning with the Form 1 filed for 2002.[11] In the same year, the Commission amended the USofA to establish accounting requirements to recognize changes in the fair value of certain security

[1] While 18 CFR 141.1 nominally refers to ''electric utilities,'' this regulation in fact applies to ''public utilities.'' *See* 16 U.S.C. 824; *accord* 18 CFR part 101 Definitions 29, 40. The reference in 18 CFR 141.1 to ''electric utilities'' predates the 1978 addition of separate statutorily defined ''electric utilities;'' *see* 16 U.S.C. 796(22), when the only utilities that were Commission regulated under the Federal Power Act were the statutorily-defined public utilities, *see* 16 U.S.C. 824. *E.g.,* 18 CFR 141.1 (1977).

[2] The September 20, 2007 NOPR was noticed in Docket No. RM07–9–000. We have assigned a new docket number, RM08–5–000, for this NOPR addressing electric utilities and licensees.

[3] 16 U.S.C. 824.

[4] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* 72 FR 54860 (Sept. 27, 2007), FERC Stats. & Regs. ¶ 32,623 (2007).

[5] *Assessment of Information Requirements for FERC Financial Forms, Notice of Inquiry,* 72 FR 8316 (Feb. 26, 2007), FERC Stats. & Regs. ¶ 35,554 (2007). While the outreach meetings addressed only Forms 1 and 2, the NOI invited comments from filers of Forms 6 and 6–Q as well.

[6] Parties who filed comments and reply comments are listed on Appendix A.

[7] A major electric utility is one that had, in the last three consecutive years, sales or transmission services that exceeded (1) one million megawatt-hours of total sales; (2) 100 megawatt-hours of sales for resale; (3) 500 megawatt-hours of power exchanges delivered; or (4) 500 megawatt-hours if wheeling for others. Utilities and licensees that are not classified as major and had total sales in each of the last three consecutive years of 10,000 megawatt-hours or more are classified as Nonmajor. *See* 18 CFR part 101.

[8] 16 U.S.C. 825a, 825f, 825h; *see also* 16 U.S.C. 825j.

[9] *Amendments to FERC Form Nos. 1 and 1–F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses,* Order No. 529, 55 FR 47311, FERC Stats. & Regs. ¶ 30,904 (1990).

[10] *Revisions to Uniform System of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A,* Order No. 552, 58 FR 17982, FERC Stats. & Regs. ¶ 30,967 (1993).

[11] *Electronic Filing of FERC Form No. 1, and Elimination of Certain Designated Schedules in Form Nos. 1 and 1–F,* Order No. 626, 67 FR 36093, FERC Stats. & Regs. ¶ 31,130 (2002).

investments, derivative instruments, and hedging activities, and added new schedules and accounts to Form 1.[12]

8. In Order No. 646, the Commission added the requirement of quarterly reporting for entities that filed Forms 1 and 1–F, and updated annual reporting requirements to add new schedules on ancillary services and electric transmission peak loads.[13] In 2005, in Order No. 668, the Commission amended its regulations to update the accounting requirements for public utilities and licensees, including independent system operators (ISOs) and regional transmission organizations (RTOs).[14] The Commission also revised its USofA with corresponding changes to Form 1 to accommodate the restructuring changes that occurred in the electric industry as a result of open-access transmission service and increasing competition in wholesale bulk power markets.[15]

III. Comments to NOI

9. As noted, the Commission received 35 comments and 15 reply comments in response to the NOI. Generally, the comments respond to the 12 questions posed in the NOI, and some raise additional issues.[16] Twenty-one initial comments or motions to intervene without filing comments and four reply comments specifically address Forms 1, 1–F and 3–Q. As might be anticipated, the Form 1 public utility filers generally assert that the existing Form 1 requires an excessive amount of data at considerable expense; the information now provided is sufficient to permit an evaluation of the filers' jurisdictional rates; and additional filing requirements would be burdensome. On the other side, Form 1 users, including nonprofit publicly-owned utilities and state commissions, state that more information is needed to permit rate evaluation and thus determine whether rates may be unjust and unreasonable.

10. The Edison Electric Institute (EEI) argues that its members currently file large quantities of financial data with the Commission and other federal and state agencies, and that the information filed with the Commission already provides sufficient financial information.[17] EEI also argues that disclosing details about a company's costs and facilities can disadvantage that company in competing with others, and that information on facility locations and security safeguards should be released under confidentiality provisions and only to those who demonstrate a need for the information.[18] In EEI's view, Forms 1 and 3–Q are intended to provide basic financial statements that capture a utility's current financial status, and are not intended as substitutes for rate cases.[19] EEI states that any significant additions or changes to the financial forms, other than minor or technical changes, could impose a substantial additional burden on companies.

11. Further, EEI asserts that the information provided in Form 1 is sufficient to audit formula rates.[20] EEI argues that, to the extent formula rates are tied to fuel costs, the Commission already collects sufficient information on those costs through the FERC Form No. 423, and that, should the Commission need additional information, it can request the information in an audit rather than impose an additional burden on filers.[21]

12. In response to the NOI's question of whether the Commission should require reporting of information on demand response initiatives, EEI notes that other agencies, such as the Department of Energy's Energy Information Administration (EIA) are also considering whether to request similar information.[22] EEI encourages the Commission to collaborate with EIA to ensure that any demand response information collected is streamlined, avoids duplicative collection efforts, and is collected from municipalities and rural cooperatives in addition to shareholder-owned utilities.[23]

13. EEI also asserts that the information contained in Form 3–Q is of marginal value beyond the information already provided in Form 1.[24] EEI suggests that the Commission perform a cost-benefit analysis of the continued viability of Form 3–Q.[25] Similarly, EEI asks the Commission to reconsider its handling of commercially sensitive information contained in the forms, and asks that the Commission not release detailed information regarding generating plant costs and operating performance.[26]

14. Duke Energy Corporation (Duke) supports the comments filed by EEI and agrees that the information currently reported in Form 1 is sufficient to audit formula rates and to permit evaluation of jurisdictional rates.[27] Duke also states that the annual and quarterly reports are not the appropriate filings in which to report demand response initiatives, and that such information is typically reported to state commissions.[28] In general, Duke argues that unless new information is clearly justified by a valid business or regulatory need, Duke would oppose any added requirements as burdensome.[29] Duke cites several current reporting requirements that it considers unnecessary or burdensome: (1) Form 1, page 105 (publishing the salaries of Executive Officers is unnecessary as that information is publicly available in SEC filings); (2) Form 1, pages 202 and 203 (Nuclear Fuel Materials) Duke argues that the expenses in Account 120.10 should be consolidated into one line that includes Allowance for Funds Used During Construction (AFUDC);[30] (3) Form 1, page 216 (Construction Work in Progress) Duke argues that the instructions for this page should be modified to require reporting of projects with balances of $10 million or greater, with all remaining balances aggregated functionally; (4) Form 1, pages 228 and 229 (Emission Allowances) Duke argues that these pages are not meaningful to users since SO_2 and NO_X must be combined. Duke suggests that separate pages be provided for SO_2 and NO_X or any other type of emission that may be required in the future; (5) Form 1, pages 232, 233 and 278 (Other Regulatory Assets, Miscellaneous Deferred Debits & Other Regulatory Liabilities) Duke notes that each of these pages allows grouping of items with balances of $50,000 or less, and suggests that this limit should be increased to $1 million as it would be a more meaningful threshold for large filers; (6) Form 1, pages 262 and 263 (General Taxes) Duke argues that these pages are time consuming to prepare and difficult for users to reconcile with the financial statements; (7) Form 1,

[12] *Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities,* Order No. 627, 67 FR 70006, FERC Stats. & Regs. ¶ 31,134 (2002).

[13] *Quarterly Financial Reporting and Revisions to the Annual Reports,* Order No. 646, FERC Stats. & Regs. ¶ 31,158, *order on reh'g,* Order No. 646–A, FERC Stats. & Regs. ¶ 31,163 (2004).

[14] *Accounting and Financial Reporting for Public Utilities Including RTOs,* Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005), *reh'g denied,* Order No. 668–A, FERC Stats. & Regs. ¶ 31,215 (2006).

[15] *Id.*

[16] A copy of the 12 questions posed in the NOI is attached as Appendix B.

[17] Comments of EEI at 8.

[18] *Id.* at 7.

[19] *Id.* at 8.

[20] *Id.* at 9.

[21] *Id.* On November 2, 2007, the Commission issued a NOPR in Docket No. RM07–18 seeking comments on the proposed elimination of Form 423. *See Elimination of FERC Form No. 423,* Notice of Proposed Rulemaking, 72 FR 65246, FERC Stats. & Regs. ¶ 32,624 (2007).

[22] *Id.* at 11.

[23] *Id.*

[24] *Id.* at 12.

[25] *Id.* at 13.

[26] *Id.*

[27] Initial Comments of Duke at 2–3.

[28] *Id.* at 3.

[29] *Id.*

[30] *See* 18 CFR part 101, Electric Plant Instructions, 17(a).

page 269 (Other Deferred Credits) this page allows grouping of items with a balance of $10,000 or less, and Duke suggests that this threshold be increased to a more meaningful level; (8) Form 1, pages 301 and 326 (Electric Operating Revenues and Purchased Power) Duke states that it is unsure if the work required to break down costs between energy and demand is necessary since some organized markets are not structured in this manner; (9) Form 1, page 304 (Revenue by Rate Codes) Duke argues that reporting revenue by rate code is unnecessary as rate codes are not necessarily consistent across utilities for the services provided. Duke suggests that it would be less burdensome to continue revenue reporting on classification only; (10) Form 1, pages 310 and 326 (Out of Period Adjustment (AD)) Duke asserts that the structure of organized markets causes member utilities to have a large number of ''out of period'' adjustments, and that the requirement to carve out the ''adjustments'' is overly burdensome; (11) Form 1, pages 328–30 (Transmission of Electricity for Others) Duke argues that columns (b) Energy Received From, and (c) Energy Delivered To, report information that provides little value to users and should be deleted. Duke asserts that this is true also for columns (f) Point of receipt and (g) Point of delivery. Additionally, Duke asserts that the requirement to footnote all amounts listed in column (m) creates time consuming work and provides little value; (12) Form 1, page 332 (Megawatt Hours Related to Transmission Charges) Duke argues that the requirement to report megawatt hours relating to transmission charges is overly burdensome because many sellers do not report transmission hours on invoices and it is very time consuming to collect the information by other means; (13) Form 1, pages 352 and 353 (Research and Development (R&D)) Duke argues that the requirement to list all R&D items costing more than $5,000 is overly burdensome and should be raised to a more reasonable level such as $100,000; (14) Form 1, pages 422–25 (Miles of Transmission Lines) Duke argues that the level of detail required for reporting miles of transmission lines is extremely burdensome and suggests that a requirement to report miles of transmission lines (by state or legal entity) and totals of type of supporting structures by voltage would be sufficient; (15) Form 1, page 426 (Substations) Duke argues that the requirement to enter the necessary information related to several thousand substations is burdensome and of questionable value to users.[31] In addition, Duke identifies several technical issues that require revision, and instructions that require modification.[32] These issues are listed in Appendix C.

15. Public Service Electric & Gas Company (PSE&G) states that the data in Forms 1 and 3–Q provide sufficient information for the Commission to monitor cost-based rates to ensure that rates are just and reasonable.[33] PSE&G, however, urges the Commission to re-examine the value of Form 3–Q to assess whether the benefits of quarterly reporting outweigh the burden of providing such information.[34] PSE&G posits that the annual nature of Form 1 provides users with a comprehensive picture of a utility's operations, which is preferable to the quarterly snapshot provided by Form 3–Q.[35]

16. Wisconsin Electric Power Company (Wisconsin Electric) argues that where differences between the accounting requirements of a state regulatory commission and this Commission exist, a utility should not be required to adhere to the Commission's USofA.[36] Wisconsin Electric cites a Commission order in which Wisconsin Electric's request for waiver of Form 1 was denied.[37] Wisconsin Electric proposes other changes to the financial forms, including: (1) A perceived disconnect between purchases and sales reported on pages 326–27 and 310–11 of Form 1 and purchase and sales amounts reported on page 401a (Wisconsin Electric suggests that this disconnect could be rectified by adding extra lines on page 401a to report off-system purchases and sales); (2) Purchases and Sales, pages 326 and 327 could be simplified by eliminating one of the category designations, or by minimizing the amount of data to be reported; and (3) the Commission should create a new report, separate from Form 1, that is filed by entities participating in an RTO which would include each of the new RTO adapted schedules.[38]

17. Comments filed by MidAmerican Energy Company and PacifiCorp (collectively, MidAmerican) propose that the Commission eliminate the filing requirement for pages 422 and 423, Transmission Line Statistics, and for pages 426 and 427, Substations. MidAmerican asserts that pages 422 and 423 are unnecessary because the information reported on pages 424 and 425, Transmission Lines Added During the Year, provides sufficient information.[39] MidAmerican asserts further that the information reported on pages 426 and 427 requires significant effort to maintain and is burdensome.[40]

18. FirstEnergy Services Company (FirstEnergy) asserts that the purpose of the annual reports is not to provide information to permit an evaluation of the filers' jurisdictional rates, but to address the Commission's accounting requirements.[41] With respect to formula rates, FirstEnergy asserts that the formula rate, in some instances, is tied to specific Form 1 items (for example, FirstEnergy's Attachment O formula rate under Midwest Independent Transmission System Operator, Inc.'s open access tariff), and additional data is not required.[42] If the transmission owner, however, proposes to make the initial rate calculation under its formula, it would be appropriate for the transmission owner to file the additional information needed to bridge the gap between the formula rate in the tariff and the Form 1 data. FirstEnergy states that having the additional information in the tariff is preferable to modifying existing Form 1 requirements.[43] In addition, FirstEnergy argues that the metrics used by the Commission to define a major utility for reporting purposes should be updated to relieve the reporting requirement for small utilities; however, FirstEnergy does not offer any specific suggestions for how this might be accomplished.[44] FirstEnergy also states that the requirement to report the type of supporting structure and size of conductor for transmission lines in columns (e) and (i) of pages 422–23 of Form 1 should be eliminated.[45]

19. Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively, Southern) supports the comments filed by EEI.

[31] *Id.* at 5–7.

[32] *Id.* at 7–9.

[33] Comments of Public Service & Electric Co. at 2.

[34] *Id.* at 5.

[35] *Id.*

[36] Comments of Wisconsin Electric at 3.

[37] *Id.*

[38] *Id.* at 6–8.

[39] Initial Comments of MidAmerican Energy Company and PacifiCorp at 4.

[40] *Id.*

[41] Comments of FirstEnergy at 3. FirstEnergy states that its comments are filed on behalf of its affiliates American Transmission Systems, Inc., Cleveland Electric Illuminating Co., Jersey Central Power and Light Co., Metropolitan Edison Co., Ohio Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., Toledo Edison Co., and York Haven Power Co.

[42] *Id.* at 6.

[43] *Id.*

[44] *Id.* at 11.

[45] *Id.*

Southern asserts that the annual and quarterly reports provide sufficient data for the public to make an evaluation of the filers' rates.[46] In addition, Southern argues that certain information now included in the forms is unnecessary and should be eliminated. Southern states that at present, the electric industry reports detailed information regarding wholesale electric transactions through the Commission's Electric Quarterly Report (EQR) and the same information should not be required to be re-filed in Forms 1 and 3–Q.[47] Rather, Southern argues that a one line entry summarizing the amount of wholesale energy sold should be sufficient. In addition, Southern requests that the Commission restrict access to confidential information when appropriate. Finally, Southern does not believe that the Commission should require reporting of information on demand response initiatives.

20. Consolidated Edison Co. of New York, Inc. and Orange and Rockland Utilities, Inc. (jointly, the Companies) take no position on whether the Commission should institute a rulemaking to revise the existing reporting requirements. The Companies do, however, urge the Commission to closely scrutinize any proposals to avoid disruptions to public utilities' existing reporting requirements.[48] The Companies' comments focus on the question of whether the Commission should require reporting of information on demand response initiatives. The Companies note that EIA currently monitors demand side management activities and collects information on those activities on an annual basis. The Companies argue that given the public availability of the EIA data, through EIA Form 861, there appears to be little benefit from duplicating the demand response data in Form 1.[49] The Companies assert that if the Commission required utilities to report different demand response data in Form 1 than they report in EIA Form 861, the use of different reporting periods or different categories for aggregation, for example, could result in conflicting information that could diminish the usefulness of the data.[50] Thus, the Companies argue that if the Commission imposes such a requirement, it is important that it conform its reporting requirement with the EIA requirement.[51]

21. The American Public Power Association (APPA) states that the annual and quarterly forms do not provide sufficient information to permit an evaluation of the filers' jurisdictional rates.[52] According to APPA, the Commission's financial forms have not kept pace with standard ratemaking practice, and should be revised to collect the information typically needed in transmission rate cases.[53] APPA states that transmission rates based on the Commission's Order No. 888 *pro forma* open access transmission tariff (OATT)[54] model use a load divisor based on replacing part of the actual system peak with peak-coincident transmission reservations, but that amount is not reported on Form 1. APPA recommends that the standard rate divisor, as specified in Order No. 888, should be reported on Form 1, and that plant, depreciation, and expenses for facilities defined as transmission in the USofA but assigned to other functions, be separately identified.[55] APPA also recommends that Accounts 447 (Sales for resale) and 456 (Other electric revenues) be modified to provide sufficient information to compute the revenue that would be considered creditable under Commission policy.[56] APPA recommends that revenues be broken down into the various firmness and duration classes of OATT and grandfathered agreements and presented separately. APPA also recommends that revenues from ''wholesale distribution'' be separately identified.[57]

22. With respect to formula rates, APPA states that Form 1 information and the rate policies embedded in rate formulas are not well matched, and substantial adjustments are often necessary. APPA states that the ''translation instructions'' that are part of many formula rates provide a very useful checklist of areas in which Form 1 information as currently collected is not fulfilling its ''rate–related'' purpose. APPA cautions, however, that if the Commission makes any changes, it must be sensitive to the fact that current formula rates reference Form 1 data by page numbers, line numbers, and cost categories, and that if changes are made to the line numbers or cost categories, parties would have to renegotiate contracts to revise the data sources.[58] Thus, APPA recommends that any modifications that may be made to Form 1 be made in ways that add to, rather than redo, the current numbering system and categories.[59] APPA also recommends that Form 1 be amended to collect additional information on transmission facilities. APPA states that on page 422, it would be useful to have an additional table showing total transmission line-miles and the amount of line-miles added in the most recent reporting year.[60] Finally, APPA urges the Commission to keep Form 1 data publicly available.[61]

23. Consumers Energy Company (Consumers) states that it relies on Form 1 data to assess the justness and reasonableness of rates proposed and charged by the transmission providers from which Consumers obtains electric transmission service. Consumers states that it does not believe that wholesale changes to the forms are required, but focuses its concern on the sufficiency of information provided with respect to assessing formula rates.[62] Consumers states that since a new rate proceeding is not initiated when formula rates are reset, a customer's sole recourse, if it believes that the rates are unjust and unreasonable, is to file a complaint under section 206 of the FPA.[63] Consumers recommends that the Commission require that electric transmission owners for whom self-implementing formula rates have been approved, provide sufficient information in Form 1 regarding Transmission Plant Additions to allow an investigation of the prudence of the additions. Specifically, Consumers recommends the following: for each project put into service during the calendar year, the transmission owner should be required to provide: (1) A description of the project; (2) the planned project cost as it was identified in the regional planning process; (3) the actual project cost; (4) whether the project was part of an approved regional plan; and (5) the justification for the project.[64] Consumers states that the ability to differentiate between projects

[46] Comments of SCS at 2.

[47] *Id.* at 4.

[48] Comments of the Companies at 1.

[49] *Id.* at 3.

[50] *Id.*

[51] *Id.*

[52] Comments of APPA at 2.

[53] *Id.* at 3.

[54] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[55] *Id.*

[56] *Id.* at 3–4.

[57] *Id.* at 4.

[58] *Id.* at 4.

[59] *Id.* at 5.

[60] *Id.* at 6.

[61] *Id.* at 7.

[62] Comments of Consumers at 3.

[63] 16 U.S.C. 824e.

[64] *Id.* at 5–6.

that have been approved as part of a regional plan versus those that have not is important in light of the Commission's requirement that transmission providers develop regional planning processes, and that more scrutiny is needed where the project has not gone through a regional planning process.[65]

24. The New York Independent System Operator, Inc. (NYISO) agrees that the financial forms are intended to provide the public with sufficient information to permit a meaningful evaluation of a filer's jurisdictional rates.[66] The NYISO states that some relatively simple changes would improve the forms.[67] The NYISO avers that the current financial forms do not provide sufficient data to permit an evaluation of all filers' jurisdictional rates, and the forms do not require the information needed to develop either the numerator or denominator needed to calculate the NYISO's rates.[68] The NYISO states that the financial forms assume that the numerator of a filer's rate will be that filer's income statement for the reporting period, but it is not true for the NYISO which has a more complicated rate structure.[69] The NYISO urges the Commission to incorporate into the forms a mechanism by which a filer can provide the details of its rate structure that are necessary to evaluate the filer's rate. The NYISO suggests that a new section could be added to the financial forms to provide the details of an entity's rate structure as well as the resulting rate.[70] In addition, the NYISO claims that the forms do not provide sufficient guidance for calculating the required information. The NYISO recommends that the Commission adopt a more ''open-ended solicitation'' of the information needed to accurately calculate the filer's rates, such as requiring the filer to report the components of the numerator and denominator of its rate, as well as the resulting rate itself.[71] The NYISO also states that the financial forms do not provide clarity as to what level of reporting information is required for the footnote disclosures in the Form 3–Q.[72]

25. The Missouri Public Service Commission (Missouri) suggests several ways in which it believes the information reported in Form 1 could be enhanced. For example, page 103 of Form 1 requires that the filer list all corporations that it controls. Missouri suggests that the filer also include all of the ''doing business as'' names on page 103.[73] Missouri's other recommendations include the following: (1) Require further details regarding any adjustments made to pages 200–07 of Form 1, Depreciation, Depletion, and Amortization Expenses; (2) require further information on how taxes are calculated on pages 262–63 of Form 1; (3) require filers to provide an explanation for each type of revenue identified on Form 1, pages 300–01; (4) require utilities to identify separately all income, franchise and property taxes by state and tax year, Form 1 pages 262–63; and (5) require utilities to provide the allocation methodology used to assign joint and common costs and the rate of return and taxes.[74]

26. The New York State Public Service Commission (NYPSC) proposes several changes to Form 1, including: (1) Expand rate schedules on page 304 to include reporting of delivery-only revenues and other unbundled services (current information is insufficient for purposes of measuring Energy Service Company penetration in a utility's service territory); (2) require a detailed breakdown of the sources of Other Electric Revenues on pages 300–01; (3) require reporting of Other Income and Other Income Deductions as part of Form 1; (4) require utilities to describe and quantify each type of affiliate transaction; and (5) require utility-specific information regarding pensions and other post-employment benefits (OPEB) and report contributions to OPEB and pension funds.[75]

27. Golden State Water Company (GSW) recommends that the Commission consider modifying the threshold requirements that determine whether smaller public utilities may file Form 1–F rather than Form 1.[76] GSW states that because small public utilities often must manage a portfolio of purchased-power resources to meet load requirements, a threshold of 100 MWh of sales for resale is likely to disqualify a small public utility from the ability to file Form 1–F rather than Form 1.[77] GSW states that the threshold does not distinguish between whether the sales for resale are made from the public utility's owned generation or from reselling purchased power, and suggests that for purposes of the Form 1 filing requirement, only sales for resale from the public utility's owned generation should be counted.[78] GSW also suggests that the Commission consider exempting Form 1–F filers from the quarterly reporting requirements of Form 3–Q, and finally, GSW requests that the Commission enable Form 1–F users to file reports electronically.[79]

28. The National Electrical Manufacturing Association (NEMA) and member ABB, Inc., filed comments advocating revision of Form 1 to address new transmission expansion by adding the requirement that utilities report expenditure plans for each of the future five years.[80] Specifically, NEMA and ABB recommend that the Transmission and Distribution Plant accounts in rows 47–75 of page 206 be expanded by adding five columns to each row that would contain annual projections of unit investment for each of the future five years.[81] They also recommend breaking the Additions column into two, to reflect both additions and replacements.[82] NEMA and ABB state that this reporting requirement will enable manufacturers to have available hard data on which to base investment in manufacturing capability. Further, they state that investment in new manufacturing capability is required in the public interest because without it, significant new transmission expansion would not be possible.[83]

29. UGI Utilities, Inc. (UGI) recommends that the Commission change its annual reporting requirements for public utilities to accommodate the circumstances of companies like UGI that do not maintain a calendar-year fiscal year.[84] The Commission's current reporting requirements require annual report filers to report information on a calendar-year basis and require that this information be certified by the filers' independent accountants. UGI asserts that for a company that does not maintain a calendar-year fiscal year, an additional burden results from the fact that the company has to prepare two sets of audited financial statements, one set on a calendar-year basis and a second on a fiscal-year basis.[85] UGI proposes that utilities with non-calendar year fiscal years continue to file annual reports every April, as the Commission's rules now provide, but

[65] *Id.* at 6.
[66] Comments of NYISO at 2.
[67] *Id.*
[68] *Id.*
[69] *Id.* at 3.
[70] *Id.* at 3–4.
[71] *Id.* at 4.
[72] *Id.* at 5–6.
[73] Comments of Missouri at 3.
[74] *Id.* at 4–5.
[75] Comments of NYPSC at 3–7.
[76] Comments of GSW at 5.
[77] *Id.* at 6.
[78] *Id.*
[79] *Id.* at 7.
[80] Comments of NEMA at 2; Comments of ABB at 2.
[81] *Id.*
[82] *Id.*
[83] *Id.* at 1–2.
[84] Comments of UGI at 1.
[85] *Id.*

rather than perform the audit process with respect to the calendar year filing, the utilities would be permitted to file a second set of financial statements following the end of their fiscal year, together with the CPA certification required by the Commission's regulations.[86] UGI states that its recommendation will not change the annual reporting obligations or deprive the Commission or the public of any information; the change will simply accommodate the circumstances of public utilities with non-calendar fiscal years and relieve the burden of incurring the effort and expense of two annual audit processes.[87]

30. The Bureau of Economic Analysis (BEA) states that it uses both direct and indirect sources for information the Commission provides on costs related to the electric industry.[88] BEA requests the Commission consider the inclusion of additional data in Form 1 that would enhance the data provided by BEA.[89] For example, BEA states that it utilizes items such as plant in service by type of utility; subsidiary and non-utility investments; allowance for funds used during construction; plant held for future use; plant leased to others; construction work in progress; depreciation; and other plant-related schedules. BEA states that in general, income statement and balance sheet data support utility industry investment by industry estimates and that tabulations by legal form of ownership are also useful, and that BEA is interested in plant-in-service separately identified for electric generation (by type of generation), transmission, and distribution.

31. Reply comments were filed by Portland General Electric Company (PGE), Consumers, the Companies, and jointly, by International Transmission Company and Michigan Electric Transmission Company, Inc. (ITC and METC). PGE's comments request that the Commission weigh the usefulness of the Form 3–Q requirement against the burden on companies to provide data on a quarterly basis. PGE states its agreement with initial comments filed by EEI and PSE&G, both of whom support a reappraisal of Form 3–Q in light of the filing burdens created by the form.[90] Consumers' reply comments address initial comments filed by Duke and MidAmerican which request that the Commission eliminate pages 422 and 423 (Transmission Line Statistics) and pages 426–27 (Substations) of Form 1.[91] Consumers avers that pages 422–27 of Form 1 provide important information on transmission lines and substations that allow Consumers and other form users to track rate base amounts on a facility-by-facility basis.[92] Consumers states that if this information is eliminated from Form 1, it will be more difficult for customers like Consumers, other stakeholders and the Commission to monitor and assess the justness and reasonableness of a transmission owner's formula rates when such rates are reset each year.[93]

32. The Companies replied to the NYPSC's recommendation that utilities be required to separately report revenues related to bundled-service customers and delivery-only customers, by expanding the data reported on page 304 of Form 1.[94] The Companies state that they do not account for revenue and service quantities on a disaggregated basis, the reporting method recommended by the NYPSC, and could not do so without a substantial investment.[95] The Companies state that new computer and accounting systems would be necessary, at a considerable expense, to disaggregate the revenue and quantity data for the separate services. Thus, the Companies state that the NYPSC's proposal would have to be implemented on an aggregated basis.[96]

33. ITC and METC's reply comments respond to Consumers' recommendation that electric transmission owners, for whom self-implementing rates have been approved, be required to provide sufficient information in Form 1 regarding Transmission Plant Additions to permit an examination of the prudence of such costs by customers and the Commission.[97] ITC and METC assert that there is no need for this information given the requirements in the Commission's Order No. 890 for coordinated, open and transparent transmission planning.[98] ITC and METC argue that Order No. 890 spells out the process for consulting and meeting with customers to discuss the methodology, criteria, and processes used to develop transmission plans, and requires local transmission planning as well as regional transmission planning to be open and transparent.[99] Thus, ITC and METC argue that Consumers seeks information that they have already agreed to provide and there is no need for the Commission to require submission of the same information in Form 1.[100]

IV. Discussion

A. General

34. Many of the comments centered on the need for technical changes, software updates, and revisions to the filing instructions rather than proposing substantive additions to the forms. Several commenters requested additional information for particular accounts or schedules but failed to specify the exact nature of the information sought. Many commenters questioned the quality of the data submitted, citing incomplete submissions and a lack of uniform responses to footnote instructions. Some of the commenters requested that the Commission place greater emphasis on enforcing the filing requirements to ensure completeness and uniformity of responses. Several commenters suggested technical changes, both to the instructions and the Form 1 software. These proposals are listed in a spreadsheet attached as Appendix C, and we invite comments on their usefulness and necessity.

35. While a number of commenters have suggested the collection of additional Form 1 data, we do not propose to adopt all of the requests for additional information. In light of the comments received and given the Commission's experience with reporting requirements, we believe that wholesale changes to Form 1 may not be needed at this time. Rather, only targeted changes are necessary. We thus will not propose that filers provide a cost and revenue study or the type of detailed information needed in a rate case, as requested by APPA. We will not require detailed information on pensions and other employment benefits, as requested by the NYPSC. We believe this level of detail may be unnecessary and burdensome.

36. In addition, some of the information sought is already included in Form 1. For example, the details of income and property taxes by state and by tax year, as requested by Missouri, are already required to be reported on pages 262–63 of Form 1. In addition, much of the information sought by Wisconsin Electric on ISO/RTO expenses is now reported in Form 1 at page 331; Order No. 668, issued in December 2005, updated the USofA and

[86] *Id.* at 2.

[87] *Id.* at 3–4.

[88] Comments of BEA at 1.

[89] *Id.*

[90] Reply Comments of PGE at 1.

[91] Reply Comments of Consumers at 2.

[92] *Id.* at 3.

[93] *Id.*

[94] Reply Comments of the Companies at 2.

[95] *Id.*

[96] *Id.* at 2–3.

[97] Reply Comments of ITC and METC at 1.

[98] *Id.* at 3; *see Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).

[99] *Id.* at 3–4.

[100] *Id.* at 5–6.

the financial reporting requirements for both annual and quarterly reports to improve the transparency of financial information and facilitate better understanding of RTO costs.[101] Form 1 at pages 400, 401a, and 401b has monthly system peak and system energy data. These data already provide sufficient information to determine the rate divisor requested by APPA. APPA also requests that Form 1 separately identify revenues creditable from particular services. Pages 310–11 (Sales for resale) and 328–30 (Transmission of Electricity for others) of Form 1 require the filer to classify the nature of service provided and users of the form can discern whether the revenues associated with that service should be treated as a credit in a cost of service analysis. As we have stated, we expect all filers to provide full information in accordance with the form's instructions.

37. The NOI requested comment on whether Form 1 should contain certain demand response information. While there is general agreement that demand response information is important and should be collected, commenters recommend that the data not be collected in Form 1. We agree that Form 1 is not the best method for collecting demand response data. The Commission currently collects demand response and advanced metering data through the FERC–727 Demand Response and Time Based Rate Programs Survey and the FERC–728 Advanced Metering Program Survey. We anticipate that we will continue to obtain the needed demand response data through these forms.

38. In addition, we reject Wisconsin Electric's assertion that, when differences between the accounting requirements of a state regulatory commission and the Commission exist, a utility should not be required to adhere to the Commission's USofA. Wisconsin Electric refers to a Commission order denying its request for a waiver of Form 1 requirements for reporting the AFUDC and asks that the Commission revisit its decision. As the Letter Order indicated, the Commission has specifically rejected requests to permit use of an AFUDC rate prescribed by a state agency rather than the maximum rate determined in accordance with the formula contained in Order No. 561.[102] In any event, this proceeding does not address the applicability of the USofA, and therefore, Wisconsin Electric's comments are outside the scope of this proceeding.

39. We remind filers that the information reported in Forms 1, 1–F and 3–Q is critical to the work of the Commission and all filers are expected to follow the instructions and submit properly completed forms. Commission staff will continue to monitor not only the timely filing of the forms but their accuracy and completeness as well.[103]

40. Notwithstanding First Energy's claim, the purpose of Form 1 is to provide basic financial and operational information to allow the Commission, customers, and competitors to monitor a utility's rates for jurisdictional services. While we recognize the time, effort and cost that the financial reports require, as described by EEI and others in their comments, we also emphasize the importance of this data—relied upon by the Commission, state commissions, utility customers, and other interested persons as an important, and in some instances the primary source of information to assess whether rates charged are just and reasonable or may be unjust and unreasonable. Further, most of the information is data that is already maintained by the public utility.

41. As stated earlier, the Form 1 is not a substitute for a rate case filing nor is the data intended to project what might happen in future years; rather the data must provide enough detail to enable the form's users to monitor and assess a utility's rates. For example, many transmission owners operate under formula rates that are reset each year. The annual rate adjustment may not initiate a rate proceeding and the customer's recourse, if it believes the resulting rates are unjust and unreasonable, is to file a complaint under section 206 of the FPA. While the Form 1 in particular is not intended to provide all of the information that would be available in a rate case, customers nevertheless need sufficient information to enable them to perform a preliminary rate assessment and to determine whether, under the circumstances, a complaint may be warranted, and the Form 1 needs to provide that information.

B. Proposed Revisions

1. Formula Rates

42. Several commenters complain that Form 1 does not contain enough information to provide a basis for interpreting or assessing formula rates.[104] APPA recommends that filers be required to provide the standard rate divisor, as specified in Order No. 888, with separate identification of any behind-the-meter loads that counted towards network transmission service billing determinants.[105] FirstEnergy recommends that in cases where a transmission owner proposes to make the calculation of the formula rate, the transmission owner should be required to file additional information to ''bridge'' the gap between the formula rate in the tariff and the Form 1 data.[106] Consumers states that the Commission should require transmission owners for whom self-implementing formula rates have been approved, to provide sufficient information regarding transmission plant additions to allow an investigation of the prudence of such investments.[107] NYISO suggests that a new section be added to the forms to provide the details of an entity's rate structure, including the development of numerators and denominators, as well as the resulting rate.[108] Missouri suggests that additional detail is needed, including information regarding depreciation, depletion and amortization expenses, other revenues, and that filers be required to provide written explanations of any significant changes from the prior year to the current year.[109]

43. On the other hand, EEI, Duke Energy, and Southern all argue that Form 1 currently contains sufficient information to audit formula rates.[110] EEI states that, to the extent formula rates are tied to fuel costs, the Commission already collects information on those costs through FERC Form 423.[111] EEI suggests that if the Commission requires additional information, it can most efficiently request the information in the context of an audit, rather than imposing a burden on all filing companies.[112]

44. Although many commenters recommend that additional information be added to enable users to audit formula rates, few specific suggestions were made that would be applicable to all Form 1 filers. The derivation of a formula rate differs from company to

[101] *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005), *reh'g denied*, Order No. 668–A, FERC Stats. & Regs. ¶ 31,215 (2006).

[102] *See Wisconsin Electric Power Co.*, Docket No. AC05–25 (January 16, 2007) (unpublished letter order) at 2.

[103] Failure to file may subject the jurisdictional entity to appropriate penalties.

[104] *See* Comments of Consumers at 3; Comments of First Energy at 3; Comments of APPA at 3–4, Comments of NYISO at 3, and Comments of Missouri at 8.

[105] Comments of APPA at 3.

[106] Comments of FirstEnergy at 6.

[107] Comments of Consumers at 5.

[108] *Id.*

[109] Comments of Missouri at 3–4, 8.

[110] *See* Comments of EEI at 9, Comments of Duke at 2; and Comments of Southern at 3.

[111] Comments of EEI at 9.

[112] *Id.*

company and there is no single one-size fits-all information that would provide the missing link in all cases.[113]

45. We believe that caution should be exercised in making changes to the formula rate data contained in Form 1. Even though FirstEnergy, for example, recommends that the Commission require transmission owners to provide some additional information to bridge the ''gap'' between the formula rate in the tariff and the available Form 1 data, it acknowledges that the Commission should be cautious in modifying the Form 1.[114] FirstEnergy correctly observes that because many formula rates require line-by-line insertion of specific Form 1 references, any change to the Form 1 filing requirements may require utilities to make corresponding section 205 applications to modify their formula rates.[115] In addition, transmission rates within the tariffs of RTOs are set in a manner that does not correspond to the individual service zones of the operating utilities filing the Form 1.

46. We believe that some limited additional information will satisfy the concerns of commenters who have requested more data. We propose to revise the Form 1 to require that if the inputs to a formula rate deviate from what is currently shown in the Form 1, the filer must provide an explanation for the change in a footnote to the corresponding page, line and column where the specific data is reported. This requirement would apply only to utilities with formula rates that have not made informational filings with the Commission. We also ask, however, whether it makes sense to require utilities to provide such explanation through a means other than the Form 1. We believe that this limited additional information is not unduly burdensome and would provide additional transparency with regard to formula rates and the underlying data.

2. Filing Thresholds for Forms 1 and 1–F

47. Several commenters recommend that the Commission revise the metrics it uses to determine whether a jurisdictional filer must submit a Form 1 or a Form 1–F.[116] FirstEnergy states that revising the threshold requirements for a Form 1 filer would reduce the reporting requirements on small utilities, but does not propose any specific revised numbers for this purpose.[117] GSW supports modifying the requirements that determine whether smaller utilities may file Form 1–F rather than Form 1, and recommends that for purposes of triggering the requirement to file Form 1, only sales for resale from the utility's owned generation should be counted.[118]

48. Sections 141.1 and 141.2 of the Commission's regulations prescribe the reporting requirements for public utilities defined as major or nonmajor.[119] The definition of major and nonmajor is contained in Part 101, Subchapter C of the regulations, which determine whether a utility must file a Form 1 or a 1–F.[120] The filing thresholds established in the USofA , General Instructions, defining major and nonmajor utility have been in place for some time.[121] While several commenters suggest that the Commission revise the metrics for determining the thresholds defining major and nonmajor utilities, no one has yet offered a specific suggestion for different thresholds. The Commission invites form filers, users, and state commissions to comment on the issue of whether the definitions for major and nonmajor utilities requires some revision. We urge commenters to offer specific suggestions for how this might be done, and why their proposed thresholds would be appropriate.

49. The Commission recently addressed the issue of the applicability of financial form filing requirements for utilities that are not subject to the Commission's jurisdiction. In *Morenci Water & Electric Co.,* the Commission granted Morenci a waiver from the requirement of §§ 141.1 and 141.400 of the Commission's regulations that utilities who are not public utilities under Part II of the FPA but who otherwise meet the threshold filing requirements for Forms 1, 1–F and 3–Q must comply with the reporting requirements established in the regulations.[122] The order noted that the Commission is in the process of re-evaluating its financial forms filing requirements and granted the waiver subject to any further Commission decision with respect to the applicability of the Commission's regulations.[123]

50. It appears that there may be five other utilities that currently file Form 1 who, like Morenci, are not public utilities under Part II of the FPA, but make sales that meet or exceed the threshold for the Commission's Forms 1 and 3–Q reporting requirements.[124] In this NOPR, we propose to eliminate the filing requirement for utilities not subject to the Commission's jurisdiction and invite comments on this proposal.

3. Affiliated Transactions

51. The NYPSC states that at present Form 1 contains no information regarding affiliate transactions.[125] NYPSC suggests that additional controls and disclosures of affiliate transactions are necessary to prevent cross-subsidization between regulated and unregulated companies. NYPSC recommends that Form 1 be revised to require utilities to describe and quantify each type of affiliate transaction.[126] NYPSC further recommends that the Commission adopt a schedule similar to FERC Form No. 60 which requires centralized service companies to perform an analysis of charges for services they bill to associate and non-associate companies by USofA account.[127]

52. The Commission agrees that information concerning the nature and extent of affiliate transactions is important because these transactions are not conducted at arms' length and could provide opportunities for inappropriate cross-subsidization. To ensure that Forms 1 and 1–F users have access to more detailed information regarding affiliated transactions, the Commission proposes to add a new page 429, ''Transactions with Associated (Affiliated) Companies'' that would require filers to report affiliated transactions. The Commission believes this proposed schedule would provide further transparency and improve the detection of cross-subsidization. On page 429, we propose to require that filers report the following: (1) A description of the good or service charged or credited; (2) the name of the

[113] When utilities submit formula rates, the Commission often requires additional informational filings to support the proposed rate, and in one instance, required that if the utility's data inputs are from non-public sources, the data must be reported in Form 1. *See, e.g., Arizona Public Service Commission*, 120 FERC ¶ 61,262 (2007); *see also Trans-Allegheny Interstate Line Co.*, 121 FERC ¶ 61,009 (2007).

[114] Comments of FirstEnergy at 6.

[115] *Id.*

[116] *See* Comments of FirstEnergy at 11; Comments of GSW at 5.

[117] Comments of FirstEnergy at 11.

[118] Comments of GSW at 5–6.

[119] 18 CFR 141.1, 141.2

[120] 18 CFR part 101; *see supra* note 7.

[121] *See Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform Systems of Accounts, Form Nos. 1, 1–F, 2 and 2–A and Related Regulations,* Order No. 390, FERC Stats. & Regs. ¶ 30,586 (1984).

[122] *See Morenci Water & Electric Co.,* 121 FERC ¶ 61,024 (2007).

[123] *Id.*

[124] The five utilities are: Alaska Electric and Power Co.; CenterPoint Energy Houston Electric, LLC; Hawaii Electric Light Co., Inc.; Hawaiian Electric Co., Inc.; and Maui Electric Co., Ltd.

[125] Comments of NYPSC at 6.

[126] *Id.*

[127] Comments of NYPSC at 6.

associated (affiliated) company; (3) the FERC account charged or credited; and (4) the amount charged or credited.

4. Transmission Investment

53. NEMA and its member ABB urge the Commission to widen the scope of Form 1 to provide for collection of information on utilities' projected costs for transmission investment.[128] NEMA thus recommends that certain accounts on page 206 be expanded to require annual projections of unit investment for each of the future five years (ABB recommends three years).[129] In addition, NEMA proposes the expansion of other information reported on page 206 to provide additional detail.[130] Both NEMA and ABB aver that the additional information would benefit manufacturers and utilities with better manufacturing quality and quality supply efficiencies.[131]

54. Although we agree that information on future transmission investment could be useful in particular circumstances, the Form 1 is not the appropriate vehicle for obtaining this information. Form 1 is intended to provide information on a utility's financial activities for the reporting year. To date, it has not included projections of future costs for future activities. We also note that Order No. 890 required each RTO or ISO to submit a proposed transmission planning process to the Commission.[132] Attachment K of the *pro forma* tariff sets forth the requirements for a transmission planning process.[133] Order No. 890 thus already provides information that should aid manufacturers' planning processes.

5. Non-Calendar Fiscal Year

55. Form 1 is filed on a calendar year basis. Some of the reporting companies, however, operate on a non-calendar fiscal year. UGI argues that it is burdensome for companies that do not use a calendar fiscal year to prepare two sets of audited statements.[134] UGI proposes that this burden could be eliminated by requiring public utilities with non-calendar fiscal years to continue to file annual reports each April, but rather than undertake a separate audit process with respect to the calendar year financial statements submitted with the annual report, those public utilities would be allowed to file a second set of financial statements following the end of their fiscal years, with those financial statements to be independently audited and accompanied by a CPA Certification as required by the Commission's regulations.[135]

56. The Commission has, upon request, granted individual waivers of the CPA Certification requirement for Forms 1 and 1–F filers so long as the certification accompanies the fiscal year-end financial information filed after the annual Form 1 or 1–F is submitted.[136] The Commission believes that UGI's proposal is reasonable and proposes to adopt it in this NOPR. The Commission requests comments on this proposal.

6. Other Revenues

57. Both NYPSC and Missouri recommend that Form 1 be expanded to require a detailed breakdown of the various sources of Other Revenues, pages 300–01.[137] At present, Form 1 contains only a cumulative total for the reporting year of the various ''Other Revenues.'' We agree that more detail would be useful and propose a change to the instructions on page 300 to require that for any revenues not otherwise specified on pages 328–30 (Transmission of Electricity for Others (Including transactions referred to as 'wheeling')), the filer must provide this information in a footnote to page 300.

7. Deletions and Miscellaneous Revisions

58. Several commenters recommended deleting certain reporting requirements. MidAmerican urges the Commission to delete Form 1, pages 422 and 423, Transmission Line Statistics, and pages 426 and 427, Substations. MidAmerican claims that the information provided on these pages is no longer necessary and unduly burdensome.[138] Duke also argues that these pages are unnecessary and should be eliminated.[139] In reply comments, Consumers argues that pages 422–27 provide important information on transmission lines and substations that allows Consumers to track rate base amounts on a facility-by-facility basis.[140] For example, Consumers states that, through the information provided on pages 422 and 423, customers are able to see changes in gross plant investment by specific transmission line and make an assessment as to the capacity, cost and benefits by comparing changes from year to year.[141] We do not believe that FirstEnergy and Duke have made a compelling case to support the elimination of this data, and we believe any burden is outweighed by the need for the data and therefore do not propose to eliminate these filing requirements.

59. As delineated at P 14, above, Duke suggests changes to and the elimination of several pages from the Form 1. Our response to each of Duke's recommendations is as follows: page 105 (Officers)—providing this information is not unduly burdensome and Duke has not offered an argument that supports eliminating this page; pages 202 and 203 (Nuclear Fuel Materials)—the reporting of nuclear fuel materials is not unduly burdensome and we do not see a need to consolidate the expenses in Account 120.10, as suggested by Duke; pages 228 and 229 (Emission Allowances)—these pages provide users valuable data on allowances allowed and not allowed by the Environmental Protection Agency and we agree that separate pages should be provided for SO_2 and NO_X; pages 262 and 263 (General Taxes)—we reject Duke's recommendation to eliminate these pages as the information reported on pages 262 and 263 provides form users with important tax information that enables form users and auditors to determine tax allowances; pages 301 and 326 (Electric Operating Revenues and Purchased Power)—this information is useful to form users as it provides a breakdown by demand and energy; page 304 (Revenue by Rate Codes)—the information is important as it provides transparency to form users and auditors; pages 310 and 326 (The requirement of AD classification)—this information is valuable to the public as it provides transparency and facilitates auditing; pages 327–30 (Transmission of Electricity for Others)—this information provides important operational data and enables users to understand affiliate relationships; page 332 (Megawatt Hours related to Transmission Charges)—this page provides important information to form users on wheeling and electricity provided by others.

60. In addition, Duke recommends raising the threshold levels for reporting certain information. Although we find

[128] Comments of NEMA at 2; Comments of ABB at 2. As noted earlier, NEMA is a trade association representing about 450 manufacturers who make the products in the electricity infrastructure. ABB is a manufacturer of power transmission and distribution systems and equipment.

[129] Comments of NEMA at 2.

[130] *Id.* at 2–3.

[131] *Id.*

[132] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 435.

[133] *Id.*

[134] Comments of UGI at 1–2.

[135] Comments of UGI at 2; *see* 18 CFR 41.11.

[136] *See, e.g., PacifiCorp,* Docket Nos. AC00–20–000 and AC00–20–001 (April 14, 2000) (unpublished letter order).

[137] Comments of NYPSC at 4; Comments of Missouri at 4.

[138] *Id.*

[139] Comments of Duke at 4–5.

[140] Reply Comments of Consumers at 3.

[141] *Id.*

that Duke's suggested new levels are generally too high and would inappropriately exclude information from smaller filers, based on our experience we agree that it is reasonable to increase certain threshold levels. We therefore propose new threshold levels but lower than Duke's proposed threshold levels, and invite comment on whether it is appropriate to increase these threshold levels and whether our proposed levels are appropriate. Page 216 (Construction Work in Progress)—Duke recommends that reporting be required only for projects with balances of $10 million or greater. We believe this number may be too high. We believe a requirement of $1 million is more reasonable and invite comments. Pages 232, 233 and 278 (Other Regulatory Assets, Miscellaneous Deferred Debits & Other Regulatory Liabilities)—Duke proposes to raise the balance limit for grouping items from $50,000 or less to $1 million or less. Again, we believe that Duke's number may be too high. However, we propose that the balance be increased from the current level of $50,000 or less to $100,000 or less. Page 269 (Other Deferred Credits)—Duke recommends that the threshold of $10,000 for grouping items be raised but does not suggest a specific number. Based on our experience, we propose that it be raised from $10,000 to $100,000. Pages 352 and 353 (Research & Development)—Duke recommends that the requirement to list all R&D items costing more than $5,000 is unduly burdensome and suggests that the level be raised to $100,000. We believe that the level proposed by Duke is too high. Rather, we propose to raise the level from $5,000 to $50,000. Comments are invited on all of these proposals.

C. Miscellaneous

61. Several commenters requested that the Commission reassess the need for Form 3–Q, and some urged that it be eliminated. The Commission believes that the increased frequency of financial information provided in Form 3–Q is important. The quarterly reports allow for more timely evaluations of existing rates and improve the transparency and currency of financial information submitted to the Commission. Thus, at this time, the Commission will not propose the elimination of Form 3–Q.

62. EEI expresses concern regarding the confidentiality of certain financial data and the possibility of competitive risks by disclosing information about a utility's performance and costs. EEI also argues a need to avoid harm to critical infrastructure. The Commission remains committed to the public availability of financial data filed in Form 1 and its other reporting forms. The Commission is also sensitive to the need for security safeguards and established Critical Energy Infrastructure Information (CEII) regulations to protect such information. However, the Commission does not believe that additional precautions or protection of financial data are required at this time.[142]

63. The NOI posed two questions that are not directly related to the forms. The first is whether public utilities and licensees should be required to notify the Commission when their total transactions fall below the minimum thresholds established in the Commission's regulations such that the utility or licensee believes that it is no longer subject to the filing requirements. Missouri supported this proposal and no one opposed it.[143] The Commission believes that notification of non-filing status would be helpful to the Commission and users of Forms 1 and 1–F. Accordingly, at such time as a utility or licensee now subject to the filing requirements has, in three consecutive years, experienced sales and transactions below the threshold levels specified in the Commission's regulations and believes that they are no longer required to file a Form 1 or 1–F, must notify the Commission of this change. The utility or licensee must file the notice on the date that the form would otherwise be due.

64. The NOI also asked commenters whether the Commission should require a showing of good cause before granting an extension of time in which to file the required reports. Missouri and SCS agreed that the Commission should impose such a requirement.[144] EEI stated that it was not sure such a requirement is necessary because the Commission had not indicated there had been a problem.[145] The Commission believes that any request for an extension of time in which to comply with the Commission's regulations or a Commission order must show good cause. Absent such a showing, the request may not be granted. The Commission staff is monitoring filers' timely compliance with the reporting requirements and will continue to do so.

D. Technical Corrections

65. We received a number of suggested technical changes and instruction revisions that we believe have merit. We have provided a full list of those suggestions in Appendix C and invite comment on those proposed changes and corrections.

V. Information Collection Statement

66. The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995.[146] The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden: The Commission estimates that on average it will take respondents 14 hours annually to comply with the proposed requirements. Most of the additional information required to be reported is already compiled and maintained by the utilities, and will not substantially increase the existing reporting burden. This will result in total hours for the following collections of information:

Data collection form	Number of respondents	Change in the number of hours per respondent	Filing periods	Change in the total annual hours
(a)	(b)	(c)	(d)	(e)=(b)×(c)×(d)

[142] Recently, the Commission renewed its commitment to public access to information, while still ensuring that information critical to energy infrastructure security is protected. As recently as October 30, 2007, the Commission amended its regulations for accessing critical energy infrastructure information (CEII) to provide landowners access to information containing CEII for the portion of a project that would affect their land, and eliminated the non-internet public (NIP) category inasmuch as information currently designated as NIP is easily available on-line from other sources. *See Critical Energy Infrastructure Information,* Order No. 683, FERC Stats. & Regs. ¶ 31,228 (2006), *order on reh'g,* 119 FERC ¶ 61,029 (2007).

[143] Comments of Missouri at 10.

[144] Comments of Missouri at 10; Comments of SCS at 6.

[145] Comments of EEI at 19.

[146] 44 U.S.C. 3507(d).

Data collection form	Number of respondents	Change in the number of hours per respondent	Filing periods	Change in the total annual hours
FERC Form 1	205	11	1	2,255
FERC Form 3–Q	194	1	3	582
Relevant Totals	.....	.....	.....	2,837

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. As the required data is already maintained by the utilities, the Commission estimates that the collection costs will not be unduly burdensome.

Title: FERC Form No. 1, ''Annual Report of Major Electric Utilities, Licensees, and Others''; FERC Form No. 1–F, ''Annual Report for Nonmajor Public Utilities and Licensees; FERC Form No. 3–Q, ''Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies.''

Action: Proposed information collection.

OMB Control Nos. 1902–0021 (Form 1); 1902–0029 (Form 1–F); 1902–0205 (Form 3–Q).

Respondents: Businesses or other for profit.

Frequency of responses: Annually and quarterly.

Necessity of the information: The information maintained and collected under the requirements of part 141 is essential to the Commission's statutory responsibilities under the FPA. The data now reported in the forms lacks certain information that the Commission believes will better permit the Commission and the public to evaluate the filers' jurisdictional rates. The additional information proposed to be collected by the NOPR will increase the forms' usefulness to both the Commission and the public. Without this information, it would be difficult for the Commission and the public to assess utility costs, and thereby ensure that utility rates are just and reasonable.

Internal Review: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support associated with the information requirements.

67. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *Michael.Miller@ferc.gov*]. Comments concerning the collection of information and the associated burden estimates, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7318; fax (202) 395–7285].

VI. Environmental Analysis

68. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[147] No environmental consideration is needed for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[148] or that addresses accounting.[149] These proposed rules, if finalized, involve information gathering, analysis, and dissemination, and accounting. In addition, these proposed rules, if finalized, involve information gathering, analysis, and dissemination, and accounting. Consequently, neither an Environmental Impact Statement or Environmental Assessment is required.

VII. Regulatory Flexibility Act

69. The Regulatory Flexibility Act of 1980 (RFA)[150] requires rulemakings to contain either a description or analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[151] Most utilities regulated by the Commission do not fall within the RFA's definition of a small entity.[152] Thus, most utilities to which the rules proposed herein, if finalized, would apply would not fall within the RFA's definition of small entities. Consequently, the rules proposed herein, if finalized, will not have a significant economic effect on a substantial number of small entities.

VIII. Comment Procedures

70. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due on or before March 14, 2008. Comments must refer to Docket No. RM08–5–000, and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

71. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing.

72. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

73. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this notice of proposed rulemaking are not required to serve copies of their comments on other commenters.

IX. Document Availability

74. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's home page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m.

[147] *See Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[148] *See* 18 CFR 380.4(a)(5).

[149] *See* 18 CFR 380.4(a)(16).

[150] 5 U.S.C. 601–612.

[151] *Id.*

[152] 5 U.S.C. 601(3).

Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

75. From the Commission's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

76. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 41 and 141

18 CFR Part 41

Administrative practice and procedures, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 141

Electric utilities and licensees, Reporting requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 41 and 141 of Title 18 of the *Code of Federal Regulations,* as set forth below:

PART 41—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

1. The authority citation for part 41 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Section 41.11 is revised to read as follows:

§ 41.11 Report of certification.

Each Major and Nonmajor public utility or licensee operating on a calendar fiscal year and not classified as Class C or Class D prior to January 1, 1984 must file with the Commission a letter or report of the independent accountant certifying approval, together with or within 30 days after the filing of the Annual Report, Form No. 1, covering the subjects and in the form prescribed in the General Instructions of the Annual Report. For such utility or licensee operating on a non-calendar fiscal year, the letter or report of the independent accountant certifying approval must be filed within 90 days of the close of the company's fiscal year. The letter or report must also identify which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission will not be bound by a certification of compliance made by an independent accountant pursuant to this paragraph.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

3. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. In § 141.1, paragraph (b)(1)(i) is revised to read as follows:

§ 141.1 FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

* * * * *

(b) *Filing requirements*—(1) *Who must file*—(i) *Generally.* Each Major electric utility (as defined in part 101 of Subchapter C of this chapter) and each licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 796, *et seq.*), including any agency, authority or other legal entity or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service equal to Major as defined above, must prepare and file electronically with the Commission the FERC Form 1 pursuant to the General Instructions as provided in that form.

* * * * *

Note: Appendix A will not be published in the Code of Federal Regulations.

APPENDIX A.—LIST OF COMMENTERS

Company name	Abbreviation
1. ABB Inc. of Norwalk, CT	ABB
2. American Public Power Association	APPA
3. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc	ConEd NY and ORU
4. Consumers Energy Company	CECo
5. Duke Energy Corporation	Duke
6. Edison Electric Institute	EEI
7. Energy Information Administration	EIA
8. FirstEnergy Service Company	FirstEnergy
9. Golden State Water Company	GSW
10. MidAmerican Energy Company	MidAmerican
11. Missouri Public Service Commission	MoPSC
12. National Electrical Manufacturers Association	NEMA
13. New York State Public Service Commission	NYPSC
14. New York Independent System Operator, Inc	NYISO
15. Public Service Electric & Gas Company	PSE&G
16. Southern Company Services, Inc	SCS
17. The Bureau of Economic Analysis	BEA
18. The Public Utilities Commission of Ohio	PUCO
19. UGI Utilities, Inc	UGI Utilities
20. Wisconsin Electric Power Company	Wisconsin Electric
Reply Comments	
1. Consumers Energy Company	CECo
2. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc	ConEd NY and ORU
3. Portland General Electric Company	PGE

APPENDIX A.—LIST OF COMMENTERS—Continued

Company name	Abbreviation
4. The International Transmission Company and Michigan Electric Transmission Company, Inc	ITC and METC

Note: Appendix B will not be published in the Code of Federal Regulations.

Appendix B—List of Questions Posed in the Notice of Inquiry (RM07–9–000).

(1) Do the annual and quarterly Financial Forms provide sufficient data for the public to permit an evaluation of the filers' jurisdictional rates?

(2) If not, what additional data is needed to conduct such an evaluation? Please specify the form (or forms) to which your suggestions pertain.

(3) Do the financial reports provide sufficient data to the public to determine revenues attributable to the sale of excess fuel retention? If not, what additional data is needed to conduct such an evaluation?

(4) Is the information included in the financial reports sufficient to audit formulaic rates?

(5) Should the Commission require reporting of information on demand response initiatives (interruptible, load control, etc.), including demand and peak demand impacts, associated costs and savings, and the number of advanced meters installed?

(6) Please explain how this additional data will be useful to users of the Financial Forms.

(7) How burdensome would any requirement for additional information be to filers of Financial Forms?

(8) Are there specific reporting requirements that are no longer necessary or unduly burdensome that should be deleted?

(9) What technical revisions, if any, need to be made to the Financial Forms? For example, identify any suggested changes in instructions, desirable software upgrades, and whether there are errors embedded in the forms which need to be corrected.

(10) Should the Commission require electric utilities, licensees and interstate natural gas and oil pipeline companies to provide notification when their total sales or transactions fall below the minimum thresholds established in the Commission's regulations such that they are no longer subject to these filing requirements?

(11) Should the Commission require a showing of good cause before granting an extension of time in which to file the required forms?

(12) Are these concerns of sufficient importance to warrant a rulemaking and, if so, what rules should the Commission promulgate? Commenters are encouraged to be as specific as possible.

Note: Appendix C will not be published in the Code of Federal Regulations.

APPENDIX C.—LIST OF PROPOSED CHANGES

Commenter	Comment
1. EEI	The software's cross-checking function has not been functional for some time, requiring companies to perform an additional level of review and verification.
2. Duke Energy Corporation	Column width cannot be altered to make dollar input fit and be readable. This occurred on Form 1, pages 120–121, Statement of Cash Flows, line 44, column b.
3. EEI	Page 114, Instruction #1—Should it read report in Column 'E' the balance for the reporting quarter and in Column 'F' the balance for the same three-month period for the prior year, rather than Column 'D' and Column 'E'? The instruction appears to be a column off.
4. EEI	Page 114, Instruction #2—Should it read report in Column 'G' the quarter-to-date amounts for electric utility function; in Column 'I' the quarter-to-date amounts for gas utility, and in Column 'K' the quarter-to-date amounts for other utility function for the current year's quarter, rather than Columns F, H, and J. The instruction appears to be a column off.
5. EEI	Page 114, Instruction #3—Should it read report in Column 'H' the quarter-to-date amounts for electric utility function; in Column 'J' the quarter-to-date amounts for gas utility; and in Column 'L' the quarter-to-date amounts for other utility function for the prior year quarter, rather than Columns G, I, and K? The instruction appears to be a column off.
6. EEI	Page 200—Should Column H be for Common rather than Column F, as referenced in instructions?
7. EEI	Page 205—Instruction 9 cuts off, as well as anything after that.
8. EEI	Page 401b—The instructions refer to Lines 2 through 6, but there are no such lines on this page. The instructions should refer to Columns b through f.
9. EEI	Page 110, Line 15 has a reference page to 122. There is no page 122; it is ''Intentionally Left Blank.'' Why is the page referenced on the Balance Sheet?
10. EEI	Page 111, Line 70 should reference page 230a, not 230.
11. EEI	Page 111, Line 72 should reference page 230b, not 230.
12. EEI	Page 112, Lines 4–6 and 8 reference page 252. There is no page 252. Why is it referenced?
EEI	Page 112, Line 10 should reference page 254b, not 254.
13. EEI	Page 117, Lines 43–44 and 66–67 reference page 340. There is no page 340. Why is it referenced?
14. EEI	Pages 122(a) and (b)—These pages follow the notes, but should come before the notes according to the page number order.
15. EEI	On many pages of the Form 1, the footnotes contain improper page references or appear on the wrong page. Each of the pages that contains footnotes shows page number 450.1 on the bottom, regardless of the actual page number.
16. Duke Energy Corporation	Printed hard copies from the software do not always match what is seen on screen.
17. EEI	Page 399—Grayed-out items (where no data should appear) get populated with subtotals or random figures that do not appear to be derived from a formula or calculation. Companies have to black them out with a marker when submitting the forms for printing. Can this be deleted or corrected?
18. EEI	Duplicate pages often print. Is it possible to make changes to prevent this?
19. Duke Energy Corporation	There have been instances when footnotes have been added to pages and disappear upon later return to the page.
20. Duke Energy Corporation	At times, filers have not been able to save changes to the forms when using the save function.
21. EEI	When companies enter information into FOSS, they find in some cases that the information is inaccurately totaled, incorrectly displayed on the screen, or wrongly printed.

APPENDIX C.—LIST OF PROPOSED CHANGES—Continued

Commenter	Comment
22. EEI	EEI members have experienced a number of problems with the current FERC financial form software, Version 5.19.0 of FOSS.
23. NYISO	The ''data cross-check'' feature used in the Commission's reporting software has not always functioned correctly.
24. EEI	Page 332—In the Transfer of Energy section column headings, the word megawatt is misspelled as ''megawatt.''
25. Wisconsin Electric Power Company.	Wisconsin Electric suggests that the instructions to all pages should be updated to include regional transmission organization (''RTO'') accounting and reporting requirements. Specifically, pages 310–311, 326–327, 332, 397–398 should receive this update. The instructions on these pages should also be enhanced to provide proper RTO MWh netting and reporting to meet FERC requirements.
26. NYISO	The Financial Forms do not provide clarity as to what level of reporting information is required for the footnote disclosures included in the quarterly Form 3–Q.
27. Duke Energy Corporation	Should have the ability to copy data into the software directly from Microsoft Excel, Word, or from other sources such as SEC 10K files.
28. Duke Energy Corporation	The FERC software is extremely time consuming and requires hours of formatting work.
29. Duke Energy Corporation	Make it easier to copy and paste blocks of data or text into software.
30. Duke Energy Corporation	Upgrade help tool so help topics can be entered and help screens assist preparers.
31. Duke Energy Corporation	Printing capabilities in the software need to be improved. The ability to print individual pages within a section should be available to the user.
32. Duke Energy Corporation	Form 1, Pages 310 & 326 (Sales for Resale and Purchase Power): FERC should publish guidelines on how to count volumes, particularly volumes associated with financial transactions.
33. Duke Energy Corporation	Need improved clarification on all field definitions within the financial forms.
34. Duke Energy Corporation	Form 1, Page 401A (Electric Energy Account): FERC should publish additional instructions on which hours should be reported. There is confusion on this page pertaining to what data should be included with respect to physical versus financial transactions.
35. Duke Energy Corporation	Form 1, Pages 301 & 326 (Electric Operating Revenues and Purchased Power): Duke would like clarification on how the statistical classification column (b) is being used.
36. New York State Public Service Commission.	The instructions for reporting electric operating revenues should be clarified to ensure consistency. In order to ensure consistency, the instructions on pages 300–301 of Form 1 should indicate that delivery-only revenues shall be recorded as Other Electric Revenues (Account 456), while sales of electricity shall be recorded on a full-service basis (Accounts 440 through 448), assuming the USofA is not revised to provide for an unbundling of electric operating revenues.

The Commission agrees with the technical revisions proposed by commenters in lines 1–24, 26–31 and 33. The Commission seeks specific comment on lines 25, 32, and 34–36.

BILLING CODE 6717–01–P

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of Year/Qtr

TRANSACTIONS WITH ASSOCIATED (AFFILIATED) COMPANIES

1. Report below the information called for concerning all goods or services received from or provided to associated (affiliated) companies.
2. Where amounts billed to or received from the associated (affiliated) company are based on an allocation process, explain in a footnote the basis of the allocation.

Line No.	Description of the Good or Service (a)	Name of Associated/Affiliated Company (b)	Account Charged or Credited (c)	Amount Charged or Credited (d)
1	Goods or Services Provided by Affiliated Company			
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5				
6				
7				
8				
9				
10				
11				
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13				
14				
15				
16				
17				
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20	Goods or Services Provided for Affiliated Company			
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FERC FORM NO. 1 (NEW)

[FR Doc. E8–1385 Filed 1–28–08; 8:45 am]
BILLING CODE 6717–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0024; FRL–8519–5]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Oxides of Nitrogen Regulations, Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving Michigan's oxides of nitrogen (NO_X) rules which satisfy the requirements of EPA's NO_X SIP Call Phase II Rule (the Phase II Rule). We are approving these regulations based on Michigan's demonstration that they will result in the achievement of the Phase II budget through source compliance with rules affecting stationary internal combustion (IC) engines which are identified in the NO_X plan submittal. Limiting NO_X emissions from IC engines will enable the State to meet the Phase II incremental difference of 1,033 tons during the ozone season, thereby improving air quality and protecting the health of Michigan citizens.

DATES: Comments must be received on or before February 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0024, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to this rule, we do not contemplate taking any further action. If EPA receives adverse comments, we will withdraw the direct final rule, and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule, which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Dated: January 11, 2008.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E8–1414 Filed 1–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2007–0963; A–1–FRL–8522–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Ozone Maintenance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine, that includes four separate 8-hour ozone maintenance plans. The Clean Air Act requires that areas that are designated attainment for the 8-hour ozone standard, and also had been previously designated either nonattainment or maintenance for the 1-hour ozone standard, develop a plan showing how the state will maintain the ozone standard for the area. Maine's maintenance plans include an emissions inventory, a plan for how the state will demonstrate and track progress of continued maintenance of the standard, a commitment to continue ozone monitoring, and a contingency plan that will ensure that any violation of the 8-hour ozone standard is promptly addressed. The intended effect of this action is to propose approval of these four maintenance plans. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before February 28, 2008.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2007–0963 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2007–0963,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–

1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: January 16, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E8–1418 Filed 1–28–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717340–7550–01]

RIN 0648–AV40

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Proposed rule, reopening of comment period.

SUMMARY: NMFS reopens the comment period on the proposed rule to implement 2008 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB) fisheries for 7 days.

DATES: The deadline for written comments on the December 28, 2007 (72 FR 73749), proposed rule is reopened to no later than 5 p.m. on February 5, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AV40, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov*;
- Fax: (978) 281–9135, Attn: Carrie Nordeen;
- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2008 MSB Specifications''.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978- 281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS is required to publish proposed specifications for the MSB fisheries, after reviewing recommendations from the Mid-Atlantic Fishery Management Council (Council). At its June 12–14, 2007, meeting in Hampton, VA, the Council recommended 2008 MSB specifications and management measures. For butterfish, the Council recommended reducing the butterfish quota to levels approximating recent landings while a butterfish rebuilding program is being developed in Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. Consistent with the lower butterfish quota recommended for 2008, the Council also recommended lowering the butterfish incidental possession limit from 2,500 lb (1.13 mt) per day to a scaled incidental possession limit, such that a 250–lb (0.11–mt) incidental possession limit would be associated with a fishery closure prior to October 1 and a 600–lb (0.27–mt) incidental possession limit would be associated with a fishery closure on or after October 1.

However, incidental possession limits for butterfish apply not only during a fishery closure, but also year-round to vessels issued butterfish incidental possession permits. At its June 2007 meeting, the Council did not explicitly recommend an incidental butterfish possession limit for vessels issued a butterfish incidental catch permit. Therefore, in the proposed rule for the 2008 MSB specifications and management measures (72 FR 73749, December 28, 2007), NMFS proposed a year-round, 250–lb (0.11–mt) butterfish possession limit for vessels issued incidental butterfish catch permits, similar to the Council's recommended incidental butterfish possession limit during a fishery closure, and invited the Council to comment on whether this measure is consistent with the Council's intent.

On January 11, 2008, NMFS received a letter from the Council requesting that NMFS reopen the comment period on the proposed rule for the 2008 MSB specifications and management measures for 7 days. Reopening this comment period will enable the Council to consider the 2008 MSB management measures at its January 29–31, 2008, meeting, and develop a position and formal comments on the butterfish incidental possession limit for vessels issued a butterfish incidental catch permit. Therefore, consistent with the Council's request, NMFS is reopening the comment period on the 2008 MSB specifications and management measures proposed rule to 5 p.m. on February 5, 2008.

Dated: January 24, 2008

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–1559 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 19
Tuesday, January 29, 2008

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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

MEETING: African Development Foundation, Board of Directors Meeting.

TIME: Wednesday, February 6, 2008, 2:30 p.m. to 4:30 p.m.

PLACE: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

DATES: Wednesday, February 6, 2008.

STATUS:

1. Closed session, Wednesday, February 6, 2008, 2:30 p.m. to 3:30 p.m.; and

2. Open session, Wednesday, February 6, 2008, 3:30 p.m. to 4:30 p.m.

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Doris Martin, General Counsel, at (202) 673–3916 or Michele M. Rivard at *mrivard@usadf.gov* of your request to attend by 12 p.m. on Monday, February 4, 2008.

Doris Martin,

Acting President.

[FR Doc. 08–395 Filed 1–25–08; 12:02 pm]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 24, 2008.

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* 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) 720–8958.

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.

Animal Plant and Health Inspection Service

Title: Importation of Fruits and Vegetables.

OMB Control Number: 0579–0128.

Summary of Collection: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. The authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

Need and Use of the Information: APHIS will use the collected information on the Phytosanitary Certificate, to determine the pest condition of the shipment at the time of inspection in the foreign country. Under Section 319.56–2(g) states, in part, that boxes of fruit imported into the United States must be clearly labeled with the name of the orchard or grove of origin, or the name of the grower, and the name of the municipality and State in which it was produced; and the type and amount of fruit it contains. The information is also used as a guide to the intensity of the inspection that is conducted when the shipment arrives. Without the information, the effectiveness of APHIS import regulations would be severely compromised.

Description of Respondents: Business or other for profit; Federal Government.

Number of Respondents: 191.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 883.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–1511 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 23, 2008.

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* 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) 720–8958.

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.

Agricultural Research Service

Title: Food Stamp Nutrition Connection Resource Sharing Form.

OMB Control Number: 0518–0031.

Summary of Collection: The voluntary ''Sharing Form'' gives Food Stamp nutrition education providers the opportunity to share information about resources that they have developed or used. Data collected using this form helps the Food and Nutrition Information Center (FNIC) identify existing nutrition education and training resources for review and inclusion into the Food Stamp Nutrition Connection's Resource Finder Database. State and local FSNE providers can use this database to identify and acquire existing, available nutrition education materials.

Need and Use of the Information: FSNC staff members will use the collected information by the Resource Sharing Form to build and constantly enhance the online database of nutrition education and training materials known as the Resource Finder Database. FSNE providers access and use the database to identify and obtain curricula, lesson plan, research, training tools and participant materials. The information will be collected using online and printed versions of the form. Failure to collect this information would significantly inhibit FNIC's ability to provide up-to-date information on existing nutrition education materials that are appropriate for FSNE programs and providers.

Description of Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16.

Agricultural Research Service

Title: Evaluation of User Satisfaction with NAL Internet Sites.

OMB Control Number: 0518–0040.

Summary of Collection: There is a need to measure user satisfaction with the National Agricultural Library (NAL) Internet sites in order for NAL to comply with Executive Order 12862, which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. NAL Internet sites are a vast collection of Web pages created and maintained by component organizations of NAL, and are visited by 4.6 million people per month on average. The information generated from this research will enable NAL to evaluate the success of this new modality in response to fulfilling its legislative mandate to disseminate vital agricultural information and truly become the national digital library of agriculture.

Need and Use of the Information: The purpose of the research is to ensure that intended audiences find the information provided on the Internet sites easy to access, clear, informative, and useful. The research will provide a means by which to classify visitors to the NAL Internet sites, to better understand how to serve them. If the information is not collected, NAL will be hindered from advancing its mandate to provide accurate, timely information to its users community.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 1,003.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–1468 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 23, 2008.

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* 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) 720–8958.

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.

Animal Plant and Health Inspection Service

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Summary of Collection: Title 7, U.S.C. 8301, The Animal Health Protection Act, authorizes the Secretary to prevent, control and eliminate domestic diseases, as well as, to take actions to prevent and manage exotic diseases such as hog cholera, foot-and-mouth disease, and other foreign diseases. Veterinary Services, a program with the Animal and Plant Health Inspection Service

(APHIS), is responsible for administering regulations intended to prevent the dissemination of animal diseases within the United States. Garbage is one of the primary media through which numerous infections or communicable diseases of swine are transmitted. Because of the serious threat to the U.S. swine industry, Congress passed Public Law 96–468 ''Swine Health Protection Act'' on October 17, 1980. This law requires USDA to ensure that all garbage is treated prior to its being fed to swine that are intended for interstate or foreign commerce or that substantially affect such commerce. The Act and the regulations will allow only operators of garbage treatment facilities, which meet certain specification to utilize garbage for swine feeding. APHIS will use various forms to collect information.

Need and Use of the Information: APHIS collects information from persons desiring to obtain a permit (license) to operate a facility to treat garbage. Prior to issuance of a license, an inspection will be made of the facility by an authorized representative to determine if it meets all requirements of the regulations. Periodic inspections will be made to determine if licenses are meeting the standards for operation of their approved facilities. Upon receipt of the information from the Public Health Officials, the information is used by Federal or State animal health personnel to determine whether the waste collector is feeding garbage to swine, whether it is being treated, and whether the feeder is licensed or needs to be licensed.

Description of Respondents: Business or other for profit.

Number of Respondents: 2,804.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 10,538.

Animal and Plant Health Inspection Service

Title: CWD in Cervids; Payment of Indemnity.

OMB Control Number: 0579–0189.

Summary of Collection: Title 7, U.S.C. 8301, Animal Health Protection Act, authorizes the Secretary of Agriculture to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination with the United States of communicable diseases of livestock and poultry, and to pay claims growing out of the destruction of animals. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to complete in exporting animals and animal products. Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy (TSE) of elk, deer and moose typified by chronic weight loss leading to death. The presence of CWD disease in cervids causes significant economic and market losses to U.S. producers. APHIS will collect information using VS Form 1–23, Appraisal & Indemnity Claim form.

Need and Use of the Information: APHIS will collect the owner's name and address, the number of animals for which the owner is seeking payment, and the appraised value of each animal. The owner must also certify as to whether the animals are subject to a mortgage. If there is a mortgage the form must be signed by the owner and each person holding a mortgage. Failure to collect this information would make it impossible for APHIS to effectively sustain their program to accelerate the eradication of CWD from the United States.

Description of Respondents: Business Or Other For-Profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 10.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–1470 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0159]

Notice of Request for Extension of Approval of an Information Collection; Gypsy Moth Identification Worksheet

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 the gypsy moth program.

DATES: We will consider all comments that we receive on or before March 31, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007–0159* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007-0159, 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–2007–0159.

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 the gypsy moth program, contact Dr. Weyman Fussell, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705. 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: Gypsy Moth Identification Worksheet.

OMB Number: 0579–0104.

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

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the United States Department of Agriculture (USDA) has authority for the control and eradication of plant pests. The Animal and Plant Health Inspection Service (APHIS), USDA, has delegated authority to carry out this mission.

As part of the mission, Plant Protection and Quarantine (PPQ), APHIS, engages in detection surveys to monitor for the presence of, among other things, the European gypsy moth and the Asian gypsy moth. The European gypsy moth was introduced into the United States in the 1860's and has been damaging woodland areas in the Northeast for more than the last 100 years. The Asian gypsy moth, which is not established in this country, is

considered to pose an even greater threat to trees and forested areas.

Unlike the flightless European gypsy moth female adult, the Asian gypsy moth female adult is capable of strong directed flight between mating and egg deposition, significantly increasing its ability to spread over a much greater area and become widely established within a short time.

To determine the presence and extent of a European gypsy moth or an Asian gypsy moth infestation, we set traps in high-risk areas to collect specimens. Once an infestation is identified, control and eradication work (usually involving State cooperation) is initiated to eliminate the moths.

APHIS personnel, with assistance from State agriculture personnel, check traps for the presence of gypsy moths. If a suspicious moth is found in the trap, it is sent to APHIS laboratories at the Otis Methods Development Center in Massachusetts so that it can be correctly identified through DNA analysis. (Since the European gypsy moth and the Asian gypsy moth are strains of the same species, they cannot be visually distinguished from each other. DNA analysis is the only way to accurately identify these insects.)

The PPQ or State employee submitting the moth for analysis completes a gypsy moth identification worksheet (PPQ Form 305), which accompanies the insect to the laboratory. The worksheet enables both Federal and State regulatory officials to identify and track specific specimens through the DNA identification tests that we conduct.

The information provided by the gypsy moth identification worksheets is vital to our ability to monitor, detect, and eradicate gypsy moth infestations.

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

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our 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 0.1708 hours per response.

Respondents: State cooperators.

Estimated annual number of respondents: 120.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 240.

Estimated total annual burden on respondents: 41 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 23rd day of January 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–1529 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Value-Added Producer Grant Application Deadlines

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $18.4 million in competitive grant funds for fiscal year (FY) 2008 to help independent agricultural producers enter into value-added activities.

Awards may be made for planning activities or for working capital expenses, but not for both. The maximum grant amount for a planning grant is $100,000 and the maximum grant amount for a working capital grant is $300,000.

DATES: Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than March 31, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

Electronic copies must be received by March 31, 2008, to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

ADDRESSES: An application guide and other materials may be obtained at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or by contacting the applicant's USDA Rural Development State Office. The State Office can be reached by calling (202) 720–4323 and pressing ''1.''

Paper applications must be submitted to the Rural Development State Office for the State in which the Project will primarily take place. Addresses are as follows:

Alabama

USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3623.

Alaska

USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7722.

Arizona

USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8717.

Arkansas

USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280.

California

USDA Rural Development, 430 G Street, AGCY 4169, Davis, CA 95616, (530) 792–5829.

Colorado

USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903.

Connecticut

USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4319.

Delaware

USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580.

Florida

USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3482.

Georgia

USDA Rural Development, 111 East Spring St., Monroe, GA 30655, (770) 267–1413, Ext. 113.

Hawaii

USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313.

Idaho

USDA Rural Development, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623.

Illinois

USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6202.

Indiana

USDA Rural Development, 5975 Lakeside Blvd., Indianapolis, IN 46278, (317) 290–3100.

Iowa

USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4714.

Kansas

USDA Rural Development, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2744.

Kentucky

USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435.

Louisiana

USDA Rural Development, 3727 Government St., Alexandria, LA 71302, (318) 473–7960.

Maine

USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168.

Maryland

USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580.

Massachusetts

USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4319.

Michigan

USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5157.

Minnesota

USDA Rural Development, 375 Jackson St., Suite 410, St. Paul, MN 55101, (651) 602–7814.

Mississippi

USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457.

Missouri

USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9320.

Montana

USDA Rural Development, 900 Technology Blvd., Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2540.

Nebraska

USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5554.

Nevada

USDA Rural Development, 1390 S. Curry St., Carson City, NV 89703, (775) 887–1222, Ext. 19.

New Hampshire

USDA Rural Development, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6069.

New Jersey

USDA Rural Development, 8000 Midlantic Drive, Suite 500N, Mt. Laurel, NJ 08054, (856) 787–7753.

New Mexico

USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952.

New York

USDA Rural Development, 441 S. Salina St., Suite 357, Syracuse, NY 13202, (315) 477–6400.

North Carolina

USDA Rural Development, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2040.

North Dakota

USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2065.

Ohio

USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2425.

Oklahoma

USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036.

Oregon

USDA Rural Development, 1201 NE. Lloyd Blvd., Suite 801, Portland, OR 97232–1274, (503) 414–3366.

Pennsylvania

USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182 .

Puerto Rico

USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251.

Rhode Island

USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4319.

South Carolina

USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5881.

South Dakota

USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1142.

Tennessee

USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1341.

Texas

USDA Rural Development, 101 South Main Street, Suite 102, Temple, TX 76501, (254) 742–9780.

Utah

USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4328.

Vermont

USDA Rural Development, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6069.

Virgin Islands

USDA Rural Development, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32606, (352) 338–3482.

Virginia

USDA Rural Development, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229, (804) 287–1594.

Washington

USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7729.

West Virginia

USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 252–8644, Ext. 146.

Wisconsin

USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7610.

Wyoming

USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700.

Electronic applications must be submitted through the Grants.gov Web site at: *http://www.grants.gov*, following the instructions found on this Web site.

FOR FURTHER INFORMATION CONTACT: Applicants should visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*, which contains application guidance, including Frequently Asked Questions and an Application Guide. Or applicants may contact their USDA Rural Development State Office. The State Office can be reached by calling (202) 720–4323 and pressing ''1,'' or by selecting the Contact Information link at the above Web site.

Applicants are encouraged to contact their State Offices well in advance of the

deadline to discuss their projects and ask any questions about the application process. Also, applicants may submit drafts of their applications to their State Offices for a preliminary review anytime prior to February 15, 2008. The preliminary review will only assess the eligibility of the application and its completeness. The results of the preliminary review are not binding on the Agency.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: USDA Rural Development.

Funding Opportunity Title: Value-Added Producer Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.352.

Dates: Application Deadline: Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than March 31, 2008 to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

Electronic copies must be received by March 31, 2008 to be eligible for FY 2008 grant funding. Late applications are not eligible for FY 2008 grant funding.

I. Funding Opportunity Description

This solicitation is issued pursuant to section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171 (see 7 U.S.C. 1621 note)) authorizing the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants. The Secretary of Agriculture has delegated the program's administration to USDA Rural Development Cooperative Programs.

The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. Cooperative Programs will competitively award funds for Planning Grants and Working Capital Grants. In order to provide program benefits to as many eligible applicants as possible, applicants must apply only for a Planning Grant or for a Working Capital Grant, but not both. Applicants other than Independent Producers must limit their Projects to Emerging Markets. Grants will only be awarded if Projects are determined to be economically viable and sustainable. No more than 10 percent of program funds can go to applicants that are Majority-Controlled Producer-Based Business Ventures.

It should also be noted that businesses of all sizes may apply and that there is no restriction on the minimum grant size that will be awarded. In FY 2007, 35 percent of awards were $50,000 or less.

Definitions

The definitions at 7 CFR 4284.3 and 4284.904 are incorporated by reference. In addition, the Agency uses the following terms in this NOSA: Agricultural Commodity, Bio-energy Project, Biomass, Business Plan, Conflict of Interest, Farm or Ranch, Feasibility Study, Project, Renewable Energy, and Venture. It is the Agency's position that those terms are defined as follows.

Agricultural Commodity—An unprocessed product of farms, ranches, nurseries, and forests. Agricultural Commodities include: Livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural Commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

Bio-energy Project—A Renewable Energy system that produces fuel, thermal energy, or electric power from a Biomass source.

Biomass—Any organic material that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or un-segregated solid waste.

Business Plan—A plan for Venture implementation that includes key management personnel, business location, the financial package, product flow, and possible customers. It also includes at least three years of pro forma financial statements. The plan is usually developed by the business with assistance from third parties.

Conflict of Interest—A situation in which a person or entity has competing professional or personal interests that make it difficult for the person or business to act impartially. An example of a Conflict of Interest is a grant recipient or an employee of a recipient that conducts or significantly participates in conducting a Feasibility Study for the recipient.

Farm or Ranch—Any place from which $1,000 or more of agricultural products (crops and livestock) were raised and sold or normally would have been raised and sold during the previous year.

Feasibility Study—An independent, third party analysis that shows how the Venture would operate under a set of assumptions—the technology used (the facilities, equipment, production process, etc.), the qualifications of the management team, and the financial aspects (capital needs, volume, cost of goods, wages, etc.). The analysis should answer the following questions about the Venture.

(1) Where is it now?

(2) Where does the group want to go?

(3) Why does the group want to go forward with the Venture?

(4) How will the group accomplish the Venture?

(5) What resources are needed?

(6) Who will provide assistance?

(7) When will the Venture be completed?

(8) How much will the Venture cost?

(9) What are the risks?

Project—Includes all proposed activities to be funded by the VAPG and Matching Funds.

Renewable Energy—Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.

Venture—Includes the Project and any other activities related to the production, processing, and marketing of the Value-Added product that is the subject of the VAPG grant request.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2008.

Approximate Total Funding: $18.4 million.

Approximate Number of Awards: 130.

Approximate Average Award: $140,000.

Floor of Award Range: None.

Ceiling of Award Range: $100,000 for Planning Grants and $300,000 for Working Capital Grants.

Anticipated Award Date: September 1, 2008.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be an Independent Producer, Agriculture Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture as defined in 7 CFR part 4284, subpart A. If the applicant is an unincorporated group (steering committee), it must form a legal entity before grant funds can be obligated. Please note that a steering committee may only apply as an Independent Producer. Therefore, the steering committee must be composed of 100 percent Independent Producers and the business to be formed must meet the definition of Independent Producer. Entities that contract out the production of an Agricultural Commodity are not considered Independent Producers. In addition, note that Farmer or Rancher Cooperatives that are 100 percent owned by farmers and ranchers are not considered under the Independent Producer category; these applicants must apply as Farmer or Rancher Cooperatives. It is the Agency's position that if a cooperative is 100 percent owned and controlled by agricultural harvesters (e.g., fishermen, loggers), it is eligible only as an Independent Producer and not as a Farmer- or Rancher-Cooperative. If a cooperative is not 100 percent owned and controlled by farmers and ranchers or 100 percent owned and controlled by agricultural harvesters, it may still be eligible to apply as a Majority-Controlled Producer-Based Business Venture, provided it meets the definition in 7 CFR part 4284, subpart A.

B. Cost Sharing or Matching

Matching Funds are required. Applicants must verify in their applications that Matching Funds are available for the time period of the grant. Matching Funds must be at least equal to the amount of grant funds requested. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as Matching Funds. Matching Funds must be spent at a rate equal to or greater than the rate at which grant funds are expended. Matching Funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions. Matching Funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Product Eligibility: The project proposed must involve a Value-Added product as defined in 7 CFR part 4284, subpart A. The definition of Value-Added includes four categories that increase the value that is realized by the producer from an Agricultural Commodity or product as the result of:

1. A change in its physical state;

2. Differentiated production or marketing, as demonstrated in a Business Plan;

3. Product segregation; or

4. The economic benefit realized from the production of Farm- or Ranch-based Renewable Energy.

Purpose Eligibility: The application must specify whether grant funds are requested for planning activities or for working capital. Applicants may not request funds for both types of activities in one application. Applications requesting more than the maximum grant amount will be considered ineligible. Please note that working capital expenses are not considered eligible for Planning Grants and planning expenses are not considered eligible for Working Capital Grants.

It is the Agency's position that applicants other than Independent Producers applying for a Working Capital Grant must demonstrate that the venture has not been in operation more than two years at the time of application in order to show that they are entering an Emerging Market.

Grant Period Eligibility: Applications that have a timeframe of more than 365 days will be considered ineligible. Applications that request funds for a time period beginning prior to October 1, 2008 and/or ending after November 30, 2009, will be considered ineligible.

Multiple Grant Eligibility: An applicant can only submit one application per funding cycle.

Applicants who have already received a Planning Grant for the proposed Project cannot receive another Planning Grant for the same Project. Applicants who have already received a Working Capital Grant for a Project cannot receive any additional grants for that Project.

Current Grant Eligibility: If an applicant currently has a VAPG, that grant period must be scheduled to expire by November 30, 2008.

Judgment Eligibility: In accordance with 7 CFR part 4284.6.

IV. Application and Submission Information

A. Address To Request Application Package

The application package for applying on paper for this funding opportunity can be obtained at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* Alternatively, applicants may contact their USDA Rural Development State Office. The State Office can be reached by calling (202) 720–4323 and pressing ''1.'' For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

Applications must be submitted on paper or electronically. An Application Guide may be viewed at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* It is strongly recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for a paper submission or it can be filled out electronically and submitted as an attachment through Grants.gov.

If an application is submitted on paper, one signed original of the complete application must be submitted.

If the application is submitted electronically, the applicant must follow the instructions given at *http://www.grants.gov.* Applicants are strongly advised to visit the site well in advance of the application deadline if they plan to apply electronically to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

Applicants must complete and submit the following elements. Please note that the requirements in the following locations within 7 CFR part 4284 have been combined with other requirements to simplify the application and reduce duplication: Sec. 4284.910(b)(5)(i), Sec. 4284.910(b)(5)(ii), and Sec. 4284.910(b)(5)(iv). The Agency will conduct an initial screening of all application for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this Notice to allow for an informed review. Information submitted as part of the application will be protected from disclosure to the extent permitted by law.

1. *Form SF–424*, ''Application for Federal Assistance.'' The form must be completed, signed and submitted as part

of the application package. Please note that applicants are required to have an Employer Identification Number (or a Social Security Number if the applicant is an individual or steering committee) and a DUNS number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. To obtain a DUNS number, access *http://www.dnb.com/us*, or call (866) 705–5711. Additional information on the VAPG program can be obtained at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm* or by contacting the applicant's Rural Development State Office. The State Office can be reached by calling (202) 720–4323 and pressing ''1.''

2. *Form SF–424A, ''Budget Information*—Non-Construction Programs.'' This form must be completed and submitted as part of the application package.

3. *Form SF–424B, ''Assurances*—Non-Construction Programs.'' This form must be completed, signed, and submitted as part of the application package.

4. *Title Page (limited to one page*). The title page must include the title of the project and may include other relevant identifying information.

5. *Table of Contents*. For ease of locating information, each application must contain a detailed Table of Contents (TOC) immediately following the title page.

6. *Executive Summary (limited to one page*). The Executive Summary should briefly describe the Project, including goals, tasks to be completed and other relevant information that provides a general overview of the Project. In this element, the applicant must clearly state whether the application is for a Planning Grant or a Working Capital Grant and the grant amount requested.

7. *Eligibility Discussion (limited to four pages*). The applicant must describe in detail how the eligibility requirements are met.

i. *Applicant Eligibility*. The applicant must first describe how it meets the definition of an Independent Producer, Agriculture Producer Group, Farmer or Rancher Cooperative, or a Majority-Controlled Producer-Based Business Venture as defined in 7 CFR 4284.3. The applicant must apply in only one of the following categories. It is the Agency's position that an applicant must provide information that it meets all of the requirements in the selected category in order to be eligible in that category.

a. *Independent Producer*. The application must provide the following information:

1. A discussion of how 100 percent of the owners of the applicant organization meet the definition of an Independent Producer;

2. A discussion that demonstrates these owners currently own and produce more than 50 percent of the raw commodity that will be used for the Value-Added product; and

3. A discussion that demonstrates the product will be owned by the Independent Producers from its raw commodity state through the production of the Value-Added product during the Project.

b. *Agriculture Producer Group*. The application must provide the following information:

1. The mission of the applicant, including how the organization works on behalf of Independent Producers;

2. A statement demonstrating that the majority of the applicant's membership and board of directors meet the definition of Independent Producer;

3. An identification (either by name or by class) of the Independent Producers on whose behalf the work will be done;

4. A discussion demonstrating that these Independent Producers currently own and produce more than 50 percent of the raw commodity that will be used for the Value-Added product; and

5. A discussion demonstrating that the Value-Added product will be owned by the Independent Producers from its raw commodity state through the production of the Value-Added product during the Project.

Note that applicants tentatively selected for a grant award must verify that the work will be done on behalf of the Independent Producers identified in the application.

c. *Farmer or Rancher Cooperative*. The application must provide the following information:

1. The applicant must reference the business' good standing as a cooperative in its state of incorporation;

2. The applicant must also explain how the cooperative is 100 percent owned and controlled by farmers and ranchers;

3. If the applicant is applying on behalf of only a portion of its membership, that portion must be identified, and the applicant must explain how all members in this portion of its membership meet the definition of an Independent Producer;

4. A discussion demonstrating that these Independent Producers currently own and produce more than 50 percent of the raw commodity that will be used for the Value-Added product; and

5. A discussion demonstrating that the Value-Added product will be owned by the Independent Producers from its raw commodity state through the production of the Value-Added product during the Project.

d. *Majority-Controlled Producer-Based Business Venture*. The application must provide the following information:

1. A statement demonstrating that the majority of the number of owners of the applicant organization meets the definition of an Independent Producer;

2. A statement demonstrating that the majority of the financial interest in the applicant organization is owned by Independent Producers;

3. A statement demonstrating that the majority of voting members on the governing board meets the definition of Independent Producer;

4. A discussion demonstrating that these Independent Producers currently own and produce more than 50 percent of the raw commodity that will be used for the Value-Added product; and

5. A discussion demonstrating that the Value-Added product will be owned by the Independent Producers from its raw commodity state through the production of the Value-Added product during the Project.

ii. *Product Eligibility*. The applicant must next describe how the Value-Added product to be produced meets at least one of the categories in the definition of Value-Added as defined in 7 CFR part 4284, subpart A. Regardless of category, the applicant must describe the raw commodity that will be used, the process used to add value, and the Value-Added product that will be marketed.

a. *Change in physical state*. The application must explain how the change in physical state or form of the product enhances its value. A change in physical state is only achieved if the product cannot be returned to its original state. Examples of this type of product include: Fish fillets, diced tomatoes, ethanol, bio-diesel, and wool rugs. Common production or harvesting methods are not considered Value-Added. The following examples are not eligible under this category: Dehydrated corn, raw fiber, and cut flowers.

b. *Differentiated production or marketing* (as demonstrated in a Business Plan). The application must explain how the production or marketing of the commodity enhances its value. The enhancement of value must be quantified by using a comparison with products produced or marketed in the standard manner, using information from the Feasibility Study and Business Plan developed for the Venture. Examples of this type of product include: Organic carrots, identity-preserved apples, and branded

milk. The following example is not eligible under this category: Marketing a non-standard variety of produce. Also, a Business Plan that has been developed for the applicant for the Venture must be referenced by indicating who developed the Business Plan and when it was completed.

c. *Physical segregation.* The application must explain how the physical segregation of a commodity enhances its value. The enhancement of value should be quantified to the extent possible by using a comparison with products marketed without segregation. Applicants must demonstrate that a physical barrier (*i.e.* distance or a structure) separates the commodity from other varieties of the same commodity during production, that the commodity will continue to be separated during processing, and that the Value-Added product produced will be separated from similar products during marketing. An example of this type of product is non-genetically-modified corn that is produced on the same Farm as genetically-modified corn where an increase in incremental value is realized for either one or both of the types of corn that is attributed to physical segregation. The following examples are not eligible under this category: Livestock sorted by grade, produce sorted by size or grade.

d. *Farm- or ranch-based renewable energy.* The application must explain how the Renewable Energy will be generated on a Farm or a Ranch owned or leased by the owners of the Venture. Please note that the owners/leasers of the Farm or Ranch must currently produce an Agricultural Commodity on the Farm or Ranch and the Farm or Ranch must meet the definition of a Farm or a Ranch as defined in the ''Definitions'' section of this notice. Examples of this type of product are wind energy, solar energy, and anaerobic digesters. The following examples are not eligible under this category: Any type of fuel, such as ethanol, bio-diesel, and switchgrass pellets, that is not generated on a Farm or Ranch owned or leased by the owners of the Venture.

iii. *Purpose Eligibility.* The applicant must describe how the Project purpose is eligible for funding. The project purpose is comprised of two components. First, the applicant must describe how the proposed Project consists of eligible planning activities or eligible working capital activities. Second, the applicant must demonstrate that the activities are directly related to the processing and/or marketing of a Value-Added product.

Applicants applying for a Working Capital Grants, must reference a third-party, independent Feasibility Study and a Business Plan completed specifically for the proposed Venture. The reference must include the name of the party who conducted the Feasibility Study and developed the Business Plan as well as the dates the Feasibility Study and Business Plan were completed.

Applicants applying for Working Capital Grants, and which are an Agriculture Producer Group, a Farmer or Rancher Cooperative, or a Majority-Controlled Producer-Based Business Venture, must also demonstrate that the proposed Venture has been in operation for less than two years at the time of application, in order to show that the applicant is entering an Emerging Market.

8. *Proposal Narrative (limited to 35 pages*).

i. *Goals of the Project.* The application must include a clear statement of the ultimate goals of the Project. There must be an explanation of how a market will be expanded and the degree to which incremental revenue will accrue to the benefit of the Agricultural Producer(s).

ii. *Performance Evaluation Criteria.* Applicants applying for Planning Grants must suggest at least one criterion by which their performance under a grant could be evaluated. Applicants applying for Working Capital Grants must identify the projected increase in customer base, revenue accruing to Independent Producers, and number of jobs attributed to the Project. Working capital projects with significant energy components must also identify the projected increase in capacity (*e.g.* gallons of ethanol produced annually, megawatt hours produced annually) attributed to the Project. Please note that these criteria are different from the Proposal Evaluation Criteria and are a separate requirement.

iii. *Proposal Evaluation Criteria.* Each of the proposal evaluation criteria referenced in this funding announcement must be addressed, specifically and individually, in narrative form. Applications that do not address the appropriate criteria (Planning Grant applications must address Planning Grant evaluation criteria and Working Capital Grant applications must address Working Capital Grant evaluation criteria) will be considered ineligible.

9. *Certification of Matching Funds.* Applicants must certify that Matching Funds will be available at the same time grant funds are anticipated to be spent and that Matching Funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of Matching Funds will have been expended prior to submitting the request for reimbursement. Please note that this certification is a separate requirement from the verification of Matching Funds requirement. Applicants must include a statement for this section that reads as follows: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement.'' A separate signature is not required.

10. *Verification of Matching Funds.* Applicants must provide documentation of all proposed Matching Funds, both cash and in-kind. The documentation below must be included in the Appendix.

i. *Matching Funds provided by the applicant in cash.* A copy of a bank statement with an ending date within one month of the application submission and showing an ending balance equal to or greater than the amount of cash Matching Funds proposed is required.

ii. *Matching Funds provided through a loan or line of credit.* The applicant must include a signed letter from the lending institution verifying the amount available, the purposes for which funds may be used, and the time period of availability of the funds. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching funds will be made available, must be included.

iii. *Matching Funds provided by the applicant through an in-kind contribution.* The application must include a signed letter from the applicant verifying the goods or services to be donated, the value of the goods or services, and when the goods and services will be donated. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching contributions will be made available, must be included. Please note that if the applicant organization is purchasing goods or services for the grant (*e.g.* salaries, inventory), the contribution is considered a cash contribution and must be verified as described in paragraph i. above. Also, if an owner or employee of the applicant organization is donating goods or services, the contribution is considered a third-party

in-kind contribution and must be verified as described in paragraph v. below.

iv. *Matching Funds provided by a third party in cash.* The application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching funds will be made available, must be included.

v. *Matching Funds provided by a third party in-kind donation.* The application must include a signed letter from the third party verifying the goods or services to be donated, the value of the goods or services, and when the goods and services will be donated. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching contributions will be made available, must be included.

Verification for cash or in-kind contributions donated outside the proposed time period of the grant will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

If Matching Funds are in cash, they must be spent on goods and services that are eligible expenditures for this grant program. If Matching Funds are in-kind contributions, the donated goods or services must be considered eligible expenditures for this grant program. Matching Funds must be spent or donated during the grant period and the funds must be expended at a rate equal to or greater than the rate grant funds are expended. Some examples of acceptable uses for matching funds are: Skilled labor performing work required for the proposed Project, office supplies, and purchasing inventory. Some examples of unacceptable uses of matching funds are: Real property, fixed equipment, buildings, and vehicles.

Expected program income may not be used to fulfill the Matching Funds requirement at the time of application. If program income is earned during the time period of the grant, it is subject to the requirements of 7 CFR part 3015, subpart F and 7 CFR 3019.24 and any provisions in the Grant Agreement.

C. Submission Dates and Times

Application Deadline Date: March 31, 2008.

Explanation of Deadlines: Paper applications must be postmarked by the deadline date (see Section IV.F. for the address). Final electronic applications must be received by Grants.gov by the deadline date. If an application does not meet the deadline above, it will not be considered for funding. Applicants will be notified that their applications did not meet the submission deadline.

D. Intergovernmental Review of Applications

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of states that maintain an SPOC may be obtained at *http://www.whitehouse.gov/omb/grants/spoc.html*. If an applicant's state has an SPOC, the applicant may submit the application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of the application. If the applicant's state has not established an SPOC, or the applicant does not want to submit the application, Rural Development will submit the application to the SPOC or other appropriate agency or agencies.

Applicants are also encouraged to contact their Rural Development State Office for assistance and questions on this process. The Rural Development State Office can be reached by calling (202) 720–4323 and selecting option ''1'' or by viewing the following Web site: *http://www.rurdev.usda.gov/*.

E. Funding Restrictions

Funding restrictions apply to both grant funds and matching funds. Funds may only be used for planning activities or working capital for Projects focusing on processing and marketing a value-added product.

1. Examples of acceptable planning activities include:

i. Obtaining legal advice and assistance related to the proposed Venture;

ii. Conducting a Feasibility Study of a proposed Value-Added Venture to help determine the potential marketing success of the Venture;

iii. Developing a Business Plan that provides comprehensive details on the management, planning, and other operational aspects of a proposed Venture; and

iv. Developing a marketing plan for the proposed Value-Added product, including the identification of a market window, the identification of potential buyers, a description of the distribution system, and possible promotional campaigns.

2. Examples of acceptable working capital uses include:

i. Designing or purchasing an accounting system for the proposed Venture;

ii. Paying for salaries, utilities, and rental of office space;

iii. Purchasing inventory, office equipment (e.g., computers, printers, copiers, scanners), and office supplies (e.g., paper, pens, file folders); and

iv. Conducting a marketing campaign for the proposed Value-Added product.

3. No funds made available under this solicitation shall be used to:

i. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

ii. Purchase, rent, or install fixed equipment, including processing equipment;

iii. Purchase vehicles, including boats;

iv. Pay for the preparation of the grant application;

v. Pay expenses not directly related to the funded Venture;

vi. Fund political or lobbying activities;

vii. Fund any activities prohibited by 7 CFR parts 3015 and 3019;

viii. Fund architectural or engineering design work for a specific physical facility;

ix. Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility. The Agency considers these expenses to be ineligible because the intent of the program is to assist producers with marketing value-added products rather than producing Agricultural Commodities;

x. Fund research and development;

xi. Purchase land;

xii. Duplicate current services or replace or substitute support previously provided;

xiii. Pay costs of the Project incurred prior to the date of grant approval;

xiv. Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence; or

xv. Pay any judgment or debt owed to the United States; or

xvi. Conduct activities on behalf of anyone other than a specific Independent Producer or group of Independent Producers. The Agency considers conducting industry-level Feasibility Studies and Business Plans that are also known as feasibility study templates or guides or business plan templates or guides to be ineligible because the assistance is not provided to a specific group of Independent Producers.

xvii. Pay for any goods or services provided by a person or entity who has a Conflict of Interest. Also, note that in-kind Matching Funds may not be provided by a person or entity that has a Conflict of Interest.

F. Other Submission Requirements

Paper applications must be submitted to the Rural Development State Office for the State in which the Project will primarily take place. Addresses can be found online at: *http://www.rurdev.usda.gov/recd_map.html* or in the **ADDRESSES** section at the beginning of this Notice.

Applications can also be submitted electronically at *http://www.grants.gov.* Applications submitted by electronic mail or facsimile will not be accepted. Each application submission must contain all required documents in one envelope, if by mail or courier delivery service.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria. Applications for Planning Grants have different criteria to address than applications for Working Capital Grants.

1. *Criteria for Planning Grant applications:*

i. *Nature of the proposed venture* (0–8 points). Projects will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. Evaluators may rely on their own knowledge and examples of similar ventures described in the proposal to form conclusions regarding this criterion. Points will be awarded based on the greatest expansion of markets and increased returns to producers.

ii. *Qualifications of those doing work* (0–8 points). Proposals will be reviewed for whether the personnel who are responsible for doing proposed tasks, including those hired to do the studies, have the necessary qualifications. If a consultant or others are to be hired, more points may be awarded if the proposal includes evidence of their availability and commitment as well. If staff or consultants have not been selected at the time of application, the application should include specific descriptions of the qualifications required for the positions to be filled. Qualifications of the personnel and consultants should be discussed directly within the response to this criterion. If resumes are included, those pages will count toward the page limit for the narrative.

iii. *Commitments and support* (0–8 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in-kind support as well as technical assistance. Support should be discussed directly within the response to this criterion. If support letters are included, those pages will count toward the page limit for the narrative. Points will be awarded based on the greatest level of documented and referenced commitment.

iv. *Project leadership* (0–8 points). The leadership abilities of individuals who are proposing the Venture will be evaluated as to whether they are sufficient to support a conclusion of likely project success. Credit may be given for leadership evidenced in community or volunteer efforts. Leadership abilities should be discussed directly within the response to this criterion. If resumes are attached at the end of the application, those pages will count toward the page limit for the narrative.

v. *Work plan/budget* (0–8 points). Applicants must submit a work plan and budget. The work plan will be reviewed to determine whether it provides specific and detailed descriptions of tasks that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the planning activities and allocate these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine if funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points.

vi. *Amount requested* (0 or 2 points). Two points will be awarded for grant requests of $50,000 or less. To determine the number of points to award, the Agency will use the amount indicated in the work plan and budget.

vii. *Project cost per owner-producer* (0–3 points). The applicant must state the number of Independent Producers that are owners of the Venture. Points will be calculated by dividing the amount of Federal funds requested by the total number of Independent Producers that are owners of the Venture. The allocation of points for this criterion shall be as follows:

- 0 points will be awarded to applications without enough information to determine the number of owner-producers.
- 1 point will be awarded to applications with a project cost per owner-producer of $70,001–$100,000.
- 2 points will be awarded to applications with a project cost per owner-producer of $35,001–$70,000.
- 3 points will be awarded to applications with a project cost per owner-producer of $1–$35,000.

An owner cannot be considered an Independent Producer unless he/she is a producer of the Agricultural Commodity to which value will be added as part of this Project. For Agriculture Producer Groups, the number used must be the number of Independent Producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a Venture, each family member shall count as one owner-producer.

Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. *Business management capabilities* (0–10 points). Applicants must discuss their financial management system, procurement procedures, personnel policies, property management system, and travel procedures. Up to two points can be awarded for each component of this criterion, based on the appropriateness of the system, procedures or policies to the size and structure of the business applying. Larger, more complex businesses will be expected to have more complex systems, procedures, and policies than smaller, less complex businesses.

ix. *Sustainability and economic impact* (0–15 points). Projects will be evaluated based on the expected sustainability of the Venture and the

expected economic impact on the local economy.

x. *Business size* (5 points if the application meets the criterion or 0 points if the application does not meet the criterion). Applicants must state the amount of gross sales earned for their most recent complete fiscal year or start-up operations must state that they have not completed a fiscal year. Points will be awarded as follows:

- 0 points will be awarded to applicants that have $10 million or more in gross sales OR to applicants that do not provide enough information to determine gross sales.
- 5 points will be awarded to applicants that have less than $10 million in gross sales.

If an applicant is tentatively selected for funding, the applicant will need to verify the gross sales amount at the time of award. Failure to verify the amount stated in the application will be grounds for withdrawing the award.

xi. *Administrator points* (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 10 criteria). The Administrator of USDA Rural Development Business and Cooperative Programs may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage Value-Added Projects in under-served areas. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

2. *Criteria for Working Capital applications:*

i. *Business viability* (0–8 points). Proposals will be evaluated on the basis of the technical and economic feasibility and sustainability of the Venture and the efficiency of operations.

ii. *Customer base/increased returns* (0–8 points). Describe in detail how the customer base for the product being produced will expand because of the Value-Added Venture. Provide documented estimates of this expansion. Describe in detail how a greater portion of the revenue derived from the venture will be returned to the producers that are owners of the Venture. Applicants should also reference the pro forma financial statements developed for the Venture. Applications that demonstrate strong growth in a market or customer base and greater Value-Added revenue accruing to producer-owners will receive more points than those that demonstrate less growth in markets and realized Value-Added returns.

iii. *Commitments and support* (0–8 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of identified markets, letters of intent or contracts from potential buyers and the amount of output to be purchased. Applications will be reviewed for evidence that the Project enjoys third-party support and endorsement, with emphasis placed on financial and in-kind support as well as technical assistance. Support should be discussed directly within the response to this criterion. If support letters are included, those pages will count toward the page limit for the narrative. Points will be awarded based on the greatest level of documented and referenced commitment.

iv. *Management team/work force* (0–8 points). The education and capabilities of project managers and those who will operate the Venture must reflect the skills and experience necessary to affect Project success. The availability and quality of the labor force needed to operate the Venture will also be evaluated. Applicants must provide the information necessary to make these determinations. Applications that reflect successful track records managing similar projects will receive higher points for this criterion than those that do not reflect successful track records.

v. *Work plan/budget* (0–8 points). The work plan will be reviewed to determine whether it provides specific and detailed descriptions of tasks that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the proposed activities and allocation of these costs among the listed tasks. Points may not be awarded unless sufficient detail is provided to determine if funds are being used for qualified purposes. Matching Funds as well as grant funds must be accounted for in the budget to receive points.

vi. *Amount requested* (0 or 2 points). Two points will be awarded for grant requests of $150,000 or less. To determine the number of points to award, the Agency will use the amount indicated in the work plan and budget.

vii. *Project cost per owner-producer* (0–3 points). The applicant must state the number of Independent Producers that are owners of the Venture. Points will be calculated by dividing the amount of Federal funds requested by the total number of Independent Producers that are owners of the Venture. The allocation of points for this criterion shall be as follows:

- 0 points will be awarded to applications without enough information to determine the number of owner-producers.
- 1 point will be awarded to applications with a project cost per owner-producer of $200,001–$300,000.
- 2 points will be awarded to applications with a project cost per owner-producer of $100,001–$200,000.
- 3 points will be awarded to applications with a project cost per owner-producer of $1–$100,000.

An owner cannot be considered an Independent Producer unless he/she is a producer of the Agricultural Commodity to which value will be added as part of this Project. For Agriculture Producer Groups, the number used must be the number of Independent Producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a Venture, each family member shall count as one owner-producer.

Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. *Business management capabilities* (0–10 points). Applicants should discuss their financial management system, procurement procedures, personnel policies, property management system, and travel procedures. Up to two points can be awarded for each component of this criterion, based on the appropriateness of the system, procedures or policies to the size and structure of business applying. Larger, more complex businesses will be expected to have more complex systems, procedures, and policies than smaller, less complex businesses.

ix. *Sustainability and economic impact* (0–15 points). Projects will be evaluated based on the expected sustainability of the Venture and the expected economic impact on the local economy.

x. *Business size* (5 points if the application meets the criterion or 0 points if the application does meet the criterion). Applicants must state the amount of gross sales earned for their most recent complete fiscal year or start-up operations must state that they have not completed a fiscal year. Points will be awarded as follows:

- 0 points will be awarded to applicants that have $10 million or more in gross sales or to applicants that do not provide enough information to determine gross sales.

• 5 points will be awarded to applicants that have less than $10 million in gross sales.

If an applicant is tentatively selected for funding, the applicant will need to verify the gross sales amount at the time of award. Failure to verify the amount stated in the application will be grounds for withdrawing the award.

xi. *Administrator points* (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 10 criteria). The Administrator of USDA Rural Development Business and Cooperative Programs may award additional points to recognize innovative technologies, insure geographic distribution of grants, or encourage Value-Added projects in under-served areas. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

B. Review and Selection Process

The Agency will conduct an initial screening of all applications for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this Notice to allow for an informed review. As part of this review, the Rural Development State Office may require Working Capital applicants to submit their Feasibility Studies and Business Plans after the application deadline, but prior to the selection of grantees to facilitate the eligibility review process.

All eligible and complete proposals will be evaluated by three reviewers based on criteria i through v described in Section V(A) (1) or (2). One of these reviewers will be a Rural Development employee not from the servicing State Office and the other two reviewers will be non-Federal persons. All reviewers must either: (1) Possess at least five years of working experience in an agriculture-related field, or (2) have obtained at least a bachelors degree in one or more of the following fields: Agri-business, business, economics, finance, or marketing and have a minimum of three years of experience in an agriculture-related field (e.g. farming, marketing, consulting, university professor, research, officer for trade association, government employee for an agricultural program). Once the scores for criteria i through v have been completed by the three reviewers, they will be averaged to obtain the independent reviewer score.

The application will also receive one score from the Rural Development servicing State Office based on criteria vi through x. This score will be added to the independent reviewer score.

Finally, the Administrator of USDA Rural Development Business and Cooperative Programs will award any Administrator points based on Proposal Evaluation Criterion xi. These points will be added to the cumulative score for criteria i through x. A final ranking will be obtained based solely on the scores received for criteria i through xi.

After the award selections are made, all applicants will be notified of the status of their applications by mail. Grantees must meet all statutory and regulatory program requirements in order to receive their award. In the event that a grantee cannot meet the requirements, the award will be withdrawn. Applicants for Working Capital Grants must submit complete, independent third-party Feasibility Studies and Business Plans before the grant award can be finalized. All Projects will be evaluated by the servicing State Office prior to finalizing the award to ensure that funded Projects are likely to be feasible in the proposed project area. Regardless of scoring, a Project determined to be unlikely to be feasible by the servicing State Office with concurrence by the National Office will not be funded.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about September 1, 2008.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including dispute resolution alternatives, by mail.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and 4284 are applicable and may be accessed at *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1*.

The following additional requirements apply to grantees selected for this program:

Grant Agreement.

Letter of Conditions.

Form RD 1940–1, ''Request for Obligation of Funds.''

Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''

Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants).''

Form RD 400–4, ''Assurance Agreement.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.*

Reporting Requirements: Grantees must provide Rural Development with a paper or electronic copy that includes all required signatures of the following reports. The reports must be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant.

1. Form SF–269 or SF–269A. A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30, regardless of when the grant period begins. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the objectives stated in the Grant Agreement. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph 1. of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, Feasibility Studies, marketing plans, Business Plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

3. Final Project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition

on the use of award funds should be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks include, but are not limited to, Feasibility Studies, marketing plans, Business Plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent. Planning Grant Projects must also report the estimated increase in revenue, increase in customer base, number of jobs created, and any other relevant economic indicators generated by continuing the project into its operational phase. Working Capital Grants must report the increase in revenue, increase in customer base, number of jobs created, any other relevant economic indicators generated by the project during the grant period in addition to the total funds used for the Venture during the grant period. These total funds must include other federal, state, local, and other funds used for the venture. Projects with significant energy components must also report expected or actual capacity (e.g. gallons of ethanol produced annually, megawatt hours produced annually) and any emissions reductions incurred during the project. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, applicants should contact their USDA Rural Development State Office at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* The State Office can also be reached by calling (202) 720–4323 and pressing ''1.'' If an applicant is unable to contact their State Office, a nearby State Office may be contacted or the RBS National Office can be reached at Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250, Telephone: (202) 720–7558, e-mail: *cpgrants@wdc.usda.gov.*

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (866) 632–9992 (voice) or (202) 401–0216 (TDD). USDA is an equal opportunity provider and employer.

Dated: January 18, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8–1532 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Proposals (RFP): Farm Labor Housing Technical Assistance Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This RFP announces an availability of funds and the timeframe to submit proposals for Farm Labor Housing Technical Assistance (FLH–TA) grants.

USDA Rural Development administers the programs of the Rural Housing Service. Section 516(i) of the Housing Act of 1949 as amended, authorizes the Rural Development to provide financial assistance (grants) to eligible private and public nonprofit agencies, which includes faith-based organizations, and to encourage the development of domestic and migrant farm labor housing projects. This RFP solicits proposals from qualified private and public nonprofit agencies on how they will provide technical assistance to groups who qualify for FLH loans and grants.

Work performed under these grants is expected to result in an increased submission of applications for farm labor housing loans and grants under the section 514 and 516 programs.

DATES: The deadline for receipt of all applications in response to this RFP is 5 p.m., Eastern Time, March 14, 2008. The application closing deadline is firm as to date and hour. USDA Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by the Postal Service or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications, will not be accepted.

ADDRESSES: Applications should be submitted to the USDA Rural Development; Attention: William K. Coles, Multi-Family Housing Processing Division, 1400 Independence Avenue SW., STOP 0781, Washington, DC 20250–0781. USDA Rural Development will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris-Green, Deputy Director, Multi-Family Housing Processing Division—Direct Loans, USDA Rural Development, 1400 Independence Ave. SW., STOP 0781, Washington, DC 20250–0781, Telephone: (202) 720–1604. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The technical assistance grants authorized under section 516 are for the purpose of encouraging the development of domestic and migrant farm labor housing projects under sections 514 and 516 of the Act. USDA Rural Development regulations for section 514 and 516 farm labor housing program are published at 7 CFR part 3560. Proposals must demonstrate the ability to provide the intended technical assistance.

USDA Rural Development intends to award one grant for each of three geographic regions listed below. When establishing the three regions and amounts of funding available for each, consideration was given to such factors as farmworker migration patterns and the similarity of agricultural products and labor needs within certain areas of the United States. A single applicant may submit grant proposals for more than one region; however, separate proposals must be submitted for each region.

Eastern Region: AL, CT, DE, FL, GA, IN, KY, MA, MD, ME, NH, NJ, NY, NC, OH, PA, PR, RI, SC, TN, VI, VT, VA, and WV.

Central Region: AR, IL, IA, KS, LA, MI, MN, MS, MO, NE, ND, OK, SD, TX, and WI.

Western Region: AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY, and the Pacific Territories.

Funding

USDA Rural Development has the authority under section 516(i) of the Housing Act of 1949, as amended to utilize up to ten (10) percent of its section 516 appropriation for FLH–TA grants. The amount USDA Rural Development has made available for FLH–TA grants is $1,386,000 for Fiscal

Year (FY) 2008. Of that amount, up to $519,750 will be available for each of the Eastern and Western Grant Regions and up to $346,500 of the remaining funds will be available for the Central Grant Region. Applications for FY 2008 will only be accepted through the date and time listed in this Notice. If no proposal is received from an eligible applicant for one of the grant regions, USDA Rural Development may, at its discretion, (1) use that grant region's funds in one or two of the other regions or (2) choose not to use that grant region's funds for FLH–TA. Work performed under these grants must be completed within three years of entering into the grant agreement provided as Appendix A to this Notice. The disbursement of grant funds during the grant period will be contingent upon the grantee meeting the minimum performance requirements as described in the Scope of Work section of this notice, including, but not limited to, the submission of loan application packages.

Eligibility

Eligibility for grants under this RFP is limited to private and public nonprofit agencies (including faith-based organizations). Grantees must have the knowledge, ability, technical expertise, and practical experience necessary to develop and package loan and grant applications for FLH under the section 514 and 516 programs (see the Application Requirements section of this RFP). In addition, grantees must possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost-efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf. There is no contribution requirement for the grantee; however, USDA Rural Development will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met.

Scope of Work

Minimum Performance Requirements:

(1) Grantees shall conduct outreach to broad-based nonprofit organizations, nonprofit organizations of farm workers, Federally recognized Indian tribes, agencies or political subdivisions of State or local government, public agencies (such as housing authorities) and other eligible organizations to further the section 514 and 516 FLH programs. Grantees will make at least twelve informational presentations to the general public annually to inform them about the section 514 and 516 FLH programs.

(2) In addition grantees shall conduct at least twelve one-on-one meetings annually with groups who are interested in applying for FLH loans or grants and assist such groups with the loan and grant application process.

(3) Grantees shall assist loan and grant applicants in securing funding sources other than USDA Rural Development for the purpose of leveraging those funds with USDA Rural Development funds.

(4) Grantees shall provide technical assistance during the development and construction phase of FLH proposals selected for funding.

(5) When submitting a grant proposal, applicants need not identify the geographic location of the places they intend to target for their outreach activities; however, applicants must commit to targeting at least five areas within the grant proposal's region. All targeted areas must be distinct market areas and not overlap. At least four of the targeted areas must be in different States. If the proposal is selected for funding, the applicant will be required to consult with each USDA Rural Development State Director in the proposal's region for the purpose of developing their list of targeted areas. When determining which areas to target, consideration will be given to (a) the total number of farm workers in the area, (b) the number of farm workers in that area who lack adequate housing, (c) the percentage of the total number of farm workers in the area that are without adequate housing, and (d) the areas which have not recently had a section 514 or 516 loan or grant funded for new construction. In addition, if selected for funding, the applicant will be required to revise their Statement of Work to identify the geographic location of the targeted areas and will submit their revised Statement of Work to the USDA Rural Development National Office for approval. When submitted for approval, the applicant must also submit a summary of their consultation with the USDA Rural Development State Directors. At grant closing, the revised Statement of Work will be attached to, and become a part of, the grant agreement.

(6) During the grant period, each grantee must submit a minimum number of loan application packages to the Agency for funding consideration. The minimum number shall be the greater of (a) at least nine loan application packages for the Eastern and Western Regions and at least seven for the Central Region or (b) a total number of loan application packages that is equal to 70 percent of the number of areas the grantee's proposal committed to targeting. Fractional percentages shall be rounded up to the next whole number. For example, if the grantee's proposal committed to targeting 13 areas, then the grantee must submit at least ten loan application packages during the grant period (13 areas x 70 percent = 9.1 rounded up to 10). The disbursement of grant funds during the grant period will be contingent upon the grantee making progress in meeting this minimum performance requirement. More than one application package for the same market area will not be considered unless the grantee submits documentation of the need for more than one FLH facility.

(7) Grantees shall provide training to applicants of FLH loans and grants to assist them in their ability to manage FLH.

Application Requirements

The application process will be in two phases; the initial application (or proposal) and the submission of a formal application. Only those proposals that are selected for funding will be invited to submit formal applications. All proposals must include the following:

1. A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

a. Applicant's name,

b. Applicant's Taxpayer Identification Number,

c. Applicant's address,

d. Applicant's telephone number,

e. Name of applicant's contact person, telephone number, and address,

f. Amount of grant requested,

g. The FLH–TA grant region for which the proposal is submitted (i.e., Eastern, Central, or Western Region), and

h. Applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the toll-free request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405).

2. A narrative describing the applicant's ability to meet the eligibility requirements stated in this Notice. If the applicant intends to have other agencies working on their behalf, the narrative must identify those agencies and

address their ability to meet the stated eligibility requirements.

3. A detailed Statement of Work covering a three year period that contains measurable monthly and annual accomplishments. The applicant's Statement of Work is a critical component of the selection process. The Statement of Work must include an outreach component describing the grantee's activities to inform potentially eligible groups about the section 514 and 516 FLH program. The outreach component must include a schedule of their planned outreach activities and must be included in a manner so that performance can be measured. In addition, the outreach activities must be coordinated with the appropriate USDA Rural Development State office and meet the minimum performance requirements as stated in the Scope of Work section of this Notice. The Statement of Work must state how many areas the applicant will target for their outreach activities. (**Note:** If selected for funding, the applicant will be required to revise their Statement of Work, after consultation with USDA Rural Development State Directors, to identify the areas that will be targeted.) The Statement of Work must also include a component for training organizations on the application process and the long-term management of FLH; describe the applicant's plans to access other funding for the development and construction of FLH and their experience in obtaining such funding, and describe any duties or activities that will be performed by other agencies on behalf of the grantee.

4. An organizational plan that includes a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of employee duties to achieve the objectives of the grant program.

5. Organizational documents and financial statements to evidence the applicant's status as a properly organized private or public nonprofit agency and the financial ability to carry out the objectives of the grant program. If other agencies will be working on behalf of the grantee, working agreements between the grantee and those agencies must be submitted as part of the proposal and any associated cost must be included in the applicant's budget. Organizational and financial statements must also be submitted as part of the application for any agencies that will be working on behalf of the grantee to document the eligibility of those organizations.

6. A detailed budget plan projecting the monthly and annual expenses the grantee will incur. Costs will be limited to those that are allowed under 7 CFR parts 3015, 3016 and 3019.

7. To assure that funds are equitably distributed and that there is no duplication of efforts on related projects, all applicants will submit a list of projects they are currently involved with, whether publicly or privately supported, that are, or may be, related to the objectives of this grant. In addition, the same disclosure must be provided for any agency that will be working on behalf of the grantee.

8. The applicant must include a narrative describing its knowledge, demonstrated ability, and practical experience in providing training and technical assistance to applicants for loans or grants for the development of multi-family or farm worker housing. The applicant must identify the type of assistance that was applied for (loan or grant, tax credits, leveraged funding, etc.), the number of times they have provided such assistance, and the success ratio of their applications. In addition, information must be provided concerning the number of housing units, their size, their design, and the amount of grant and loan funds that were secured. If the applicant has previously received, or is currently receiving, a FLH–TA grant, the applicant must provide documentation that they met the minimum performance requirements of that grant.

9. A narrative describing the applicant's knowledge and demonstrated ability in estimating development and construction costs of multi-family or farm labor housing and for obtaining the necessary permits and clearances.

10. A narrative describing the applicant's ability and experience in overcoming community opposition to farm labor housing and describing the methods and techniques that they will use to overcome any such opposition, should it occur.

11. A separate one-page information sheet listing each of the ''Application Scoring Criteria'' contained in this RFP, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria.

Application Scoring Criteria

The initial application (or proposal) evaluation process designed for this RFP will consist of two phases. The first phase will evaluate the applicant's Statement of Work and the degree to which it sets forth measurable objectives that are consistent with the objectives of FLH–TA grant program. The second phase will evaluate the applicant's knowledge and ability to provide the management necessary for carrying out a FLH–TA grant program. Proposals will only compete against other proposals within the same region. Selection points will be awarded as follows:

Phase I—Statement of Work

The Statement of Work will be evaluated to determine the degree to which it outlines efficient and measurable monthly and annual outcomes as follows:

a. The minimum performance requirements of this Notice require that the grantee commit to targeting at least five areas (at least four of which are in different States). The more areas the applicant commits to targeting, the more scoring points they will be awarded; however, the more areas that they commit to targeting, the more loan application packages they will be expected to submit as discussed above under Scope of Work. The minimum performance requirements of this grant are based, in part, on the number of areas the applicant has committed to targeting. The number of areas within the region that the applicant has committed to targeting for outreach activities:

(1) 5–7 targeted areas: 0 points.
(2) 8 targeted areas: 5 points.
(3) 9–10 targeted areas: 10 points.
(4) 11–12 targeted areas: 15 points.
(5) 13 or more areas: 20 points.

b. USDA Rural Development wants the grantee to cover as much of the grant region as possible. USDA Rural Development does not want the grantee's efforts to be concentrated in a limited number of States. For this reason, additional points will be awarded to grant proposals that target areas in more than four States (the minimum requirement is four) within their region. The grant proposal commits to targeting areas in the following number of States:

(1) 4 States: 0 points.
(2) 5 States: 5 points.
(3) 6 States: 10 points.
(4) 7 States: 15 points.
(5) More than 7 States: 20 points.

Phase II—Project Management

a. The number of complete Section 515 multi-family or Section 514 or 516 FLH loan or grant applications the applicant entity has assisted in developing and packaging:

(1) 0–5 applications: 0 points.
(2) 6–10 applications: 10 points.
(3) 11–15 applications: 20 points.
(4) 16 or more applications: 30 points.

b. The number of groups seeking loans or grants for the development of Section 515 multi-family or Section 514

or 516 FLH projects that the applicant entity has provided training and technical assistance:

(1) 0–5 groups: 0 points.

(2) 6–10 groups: 5 points.

(3) 11–15 groups: 10 points.

(4) 16 or more groups: 15 points.

c. The number of Section 515 multi-family or Section 514 or 516 FLH projects for which the applicant entity has assisted in estimating development and construction costs and obtaining the necessary permits and clearances:

(1) 0–5 projects: 0 points.

(2) 6–10 projects: 5 points.

(3) 11–15 projects: 10 points.

(4) 16 or more projects: 15 points.

d. The number of times the applicant entity has encountered community opposition and was able to overcome that opposition so that farm labor housing development was completed:

(1) 0–2 times: 0 points.

(2) 2–5 times: 5 points.

(3) 6–10 times: 10 points.

(4) 11 or more times: 15 points.

e. The number of times the applicant entity has been able to leverage funding from two or more sources for the development of a Section 515 multi-family or Section 514 or 516 FLH project:

(1) 0–5 times: 0 points.

(2) 6–10 times: 5 points.

(3) 11–15 times: 10 points.

(4) 16 or more times: 15 points.

f. The number of FLH projects that the applicant entity has assisted with on-going management (i.e., making units available to rent out to potential tenants, maintenance, etc.):

(1) 0–5 FLH projects: 0 points.

(2) 6–10 FLH projects: 5 points.

(3) 11–15 FLH projects: 10 points.

(4) 16 or more FLH projects: 15 points.

Tie Breakers—In the event two or more proposals within a region are scored with an equal amount of points, selections will be made in the following order:

1. If there are two or more proposals that have equivalent scores, the lowest cost proposal will be selected.

2. If two or more proposals have equivalent scores and have the same cost, a proposal will be selected at random.

Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0189.

Dated: January 15, 2008.

Russell T. Davis,

Administrator, Housing and Community Facilities Programs, USDA Rural Development.

Appendix A—Farm Labor Housing Technical Assistance Grant Agreement

Farm Labor Housing Technical Assistance Grant Agreement

This agreement dated _____ is between _____, Herein called ''grantee'', organized and operated under _____, (authorizing State statute) and the United States of America acting through the Rural Housing Service, USDA Rural Development, herein called ''USDA Rural Development''. USDA Rural Development agrees to grant a sum not to exceed $_____, subject to the terms and conditions of this agreement; provided, however, that the grant funds actually advanced and not needed for grant purposes shall be returned immediately to USDA Rural Development. The Farm Labor Housing Technical Assistance (FLH–TA) grant statement of work approved by USDA Rural Development, is attached, and shall commence within 10 days of the date of execution of this agreement by USDA Rural Development and be completed by _____. (Date) USDA Rural Development may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this grant agreement or USDA Rural Development regulations related hereto. The grantee may appeal adverse decisions in accordance with USDA Rural Development's appeal procedures contained in 7 CFR part 11. In consideration of said grant by USDA Rural Development to the grantee, to be made pursuant to section 516 of the Housing Act of 1949, as amended, the grantee will provide such a program in accordance with the terms of this grant agreement and applicable regulations.

PART A—Definitions

1. ''Beginning date'' means the date this agreement is executed by both parties and costs can be incurred.

2. ''Ending date'' means the date this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.

3. ''Disallowed costs'' are those charges to a grant which USDA Rural Development determines cannot be authorized in accordance with applicable federal cost principles contained in 7 CFR parts 3015, 3016 and 3019, as appropriate.

4. ''Grant closeout'' is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

5. ''Termination'' of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

PART B—Terms of Agreement

USDA Rural Development and the grantee agree that:

1. All grant activities shall be limited to those authorized by this grant agreement and section 516 (i) of the Housing Act of 1949, as amended.

2. This agreement shall be effective when executed by both parties.

3. The FLH–TA grant activities approved by USDA Rural Development shall commence and be completed by the date indicated above, unless terminated under part B, paragraph 18 of this grant agreement, or extended by execution of the attached ''Amendment'' by both parties.

4. The grantee shall carry out the FLH–TA grant activities and processes as described in the approved statement of work which is attached to, and made a part of, this grant agreement. Grantee will be bound by the activities and processes contained in the statement of work and the further conditions contained in this grant agreement. If the statement of work is inconsistent with this grant agreement, then the latter will govern. A change of any activities and processes must be in writing and must be signed by the approval official.

5. The grantee shall use grant funds only for the purposes and activities approved by USDA Rural Development in the FLH–TA grant budget and authorized by law. Any uses not provided for in the approved budget must be approved in writing by USDA Rural Development in advance.

6. If the grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid to Federal employees or (if lower) an amount authorized by the grantee for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the USDA Rural Development Federal employee rates will be the maximum allowed.

7. Grant funds will not be used:

(a) To pay obligations incurred before the beginning date or after the ending date of this agreement;

(b) For any entertainment purposes;

(c) To pay for any capital assets, the purchase of real estate or vehicles, the improvement or renovation of the grantee's office space, or for the repair or maintenance of privately owned vehicles;

(d) For any other purpose prohibited in 7 CFR parts 3015, 3016, 3019 and 3560, as applicable;

(e) For administrative expenses exceeding 20 percent of the FLH–TA grant funds; or

(f) For purposes other than to encourage the development of farm labor housing.

8. The grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. The disbursal of grants will be governed as follows:

(a) In accordance with 31 CFR part 205, grant funds will be provided by USDA Rural Development as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by a United States Department of Treasury (''Treasury'') check or electronic funds transfer, as appropriate, directly to the grantee. In addition, the grantee must submit Standard Form (SF) 272, ''Federal Cash Transactions Report,'' each time an advance of funds is made. This report shall be used by USDA Rural Development to monitor cash advances made to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all federal funds as required by 7 CFR parts 3015, 3016, and 3019, as applicable.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's statement of work and budget and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the USDA Rural Development and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within 7 calendar days from the date of the Electronic Funds Transfer (EFT); or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the EFT.

(d) Grantee shall provide satisfactory evidence to USDA Rural Development that all officers of the grantee's organization authorized to receive or disburse federal funds are covered by fidelity bonds in an amount of at least the grant amount to protect USDA Rural Development's interests.

10. The grantee will submit performance, financial, and annual reports as required by 7 CFR parts 3015, 3016, and 3019, as applicable, to the appropriate USDA Rural Development office. These reports must be reconciled to the grantee's accounting records.

(a) As needed, but not more frequently than once every 30 calendar days, submit an original and two copies of SF–270, ''Request for Advance or Reimbursement.'' In addition, the grantee must submit a SF–272, each time an advance of funds is made. This report shall be used by USDA Rural Development to monitor cash advances made to the grantee.

(b) Quarterly reports will be submitted within 15 days after the end of each calendar quarter. Quarterly reports shall consist of an original and one copy of SF–269, ''Financial Status Report,'' and a quarterly performance report summarizing the grantee's activities and accomplishments for the prior quarter. Item 10(g) (total program outlays) of SF–269, will be less any rebates, refunds, or other discounts. The quarterly performance report will provide a summary of the grantee's activities for the prior quarter and their progress in accomplishing the tasks described in the grantee's statement of work. The quarterly report will also inform USDA Rural Development of any problems or difficulties the grantee is experiencing (i.e., locating sites, finding feasible markets, gaining public support, etc.). The reports will be reviewed by USDA Rural Development for the purpose of evaluating whether the grantee is accomplishing the objectives of the grant and whether USDA Rural Development can assist the grantee in any manner. Quarterly reports shall be submitted to a designated official at the USDA Rural Development National office, with a copy of the report to each State Director within the FLH–TA grant region where the grantee is operating.

(c) Submit within 90 days after the termination or expiration of the grant agreement, an original and two copies of SF–269, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee under FLH–TA grants. Final reports may serve as the last quarterly report.

(d) USDA Rural Development may change the format or process of the monthly and quarterly activities and accomplishments reports during the performance of the agreement.

11. In accordance with Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments (a copy of which is available in any USDA Rural Development office), compensation for employees will be considered reasonable only to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds $100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval of USDA Rural Development.

13. The results of the program assisted by grant funds may be published by the grantee without prior review by USDA Rural Development, provided that such publications acknowledge the support provided by funds provided by USDA Rural Development pursuant to the provisions of title V of the Housing Act of 1949, as amended, and that five copies of each such publication are furnished to USDA Rural Development.

14. The grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingency fee.

15. No person in the United States shall, on the grounds of race, religion, color, sex, familial status, age, national origin, or disability, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of USDA Rural Development contained in 7 CFR part 1901, subpart E.

16. In all hiring or employment made possible by or resulting from this grant:

(a) The grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, familial status, age, national origin, or disability;

(b) The grantee will ensure that employees are treated without regard to their race, religion, color, sex, familial status, age, national origin, or disability. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation;

and selection for training, including apprenticeship; and

(c) In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the ''Equal Employment Clause'' as specified by Form RD 400–1, ''Equal Opportunity Agreement''.

17. The grantee accepts responsibility for accomplishing the FLH–TA grant program as submitted and included in its pre-application and application, including its statement of work. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with state and local housing organizations, where they exist.

(b) Provide continuing information to USDA Rural Development on the status of grantee's FLH–TA grant programs, projects, related activities, and problems.

(c) Inform USDA Rural Development as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time schedules required and any USDA Rural Development assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. The grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to USDA Rural Development any uncommitted balance of grant funds.

(ii) The grantee will furnish to USDA Rural Development within 90 calendar days after the date of completion of the grant, SF–269 and all financial, performance, and other reports required as a condition of the grant, including a final audit report, as required by 7 CFR parts 3015, 3016, and 3019, as applicable. In accordance with 7 CFR part 3015 and OMB Circular A–133, audits must be conducted in accordance with generally accepted government auditing standards.

(iii) The grantee shall account for any property acquired with FLH–TA grant funds or otherwise received from USDA Rural Development.

(iv) After the grant closeout, USDA Rural Development will recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this grant agreement, the Administrator (or his or her designee) can, on reasonable notice, suspend the grant pending corrective action or terminate the grant in accordance with part B, paragraph 18(c) of this grant agreement. In such instances, USDA Rural Development may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. USDA Rural Development will withhold further advances and grantees are prohibited from further use of grant funds, pending corrective action.

(c) Grant termination will be based on the following:

(i) Termination for cause. This grant may be terminated in whole, or in part, at any time before the date of completion, whenever USDA Rural Development determines that the grantee has failed to comply with the terms of this agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by USDA Rural Development or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by USDA Rural Development in connection with any USDA Rural Development programs.

(F) Failure to maintain an accounting system acceptable to USDA Rural Development.

(ii) Termination for convenience. USDA Rural Development or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) USDA Rural Development shall notify the grantee in writing of the determination and the reasons for and the effective date of the suspension or termination. Except for termination for convenience, grantees have the opportunity to appeal a suspension or termination in accordance with 7 CFR part 11.

19. Upon any default under its representations or agreements contained in this instrument, the grantee, at the option and demand of USDA Rural Development, will repay to USDA Rural Development forthwith the grant funds received with interest at the rate of 5 percent per annum or such other rate as USDA Rural Development has established by regulation from the date of the default. The provisions of this grant agreement may be enforced by USDA Rural Development, at its option and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this grant agreement or by such other proceedings in law or equity, in either Federal or state courts, as may be deemed necessary by USDA Rural Development to assure compliance with the provisions of this grant agreement and the laws and regulations under which this grant is made.

20. Extension of this grant agreement, modifications of the statement of work, or changes in the grantee's budget may be approved by USDA Rural Development provided, in USDA Rural Development's opinion, the extension or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the statement of work during the period of the extension and/or modifications.

21. The provisions of 7 CFR parts 3015, 3016, and 3019, as applicable, are incorporated herein and made a part hereof by reference.

PART C—Grantee Agrees

1. To comply with property management standards for expendable and nonexpendable personal property established by 7 CFR parts 3015, 3016, and 3019.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on a cash basis. The financial management system shall include a tracking system to insure that all program income, including loan

repayments, are used properly. The standards for financial management systems are contained in OMB Circular A–110 and 7 CFR part 3015.

(b) Records which identify adequately the source and application of funds for grant supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after the submission of the final performance report, in accordance with part B, paragraph 10 (c) of this grant agreement, except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the 3-year period, the records shall be retained until all litigation, claims, audits, or investigative findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by USDA Rural Development, the 3-year retention requirement is not applicable.

(c) When records are transferred to or maintained by USDA Rural Development, the 3-year retention requirement is not applicable.

(d) Scanned or microfilm copies may be substituted in lieu of original records. USDA Rural Development and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by USDA Rural Development concerning the grantee's actions in soliciting citizen participation in the applications process, including published notices of public meetings, actual public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by USDA Rural Development or acquired wholly or in part with FLH–TA grant funds without the written consent of USDA Rural Development.

6. To provide USDA Rural Development with such periodic reports of grantee operations as may be required by authorized representatives of USDA Rural Development.

7. To execute Form RD 400–1, ''Equal Opportunity Agreement'', and Form RD 400–4, ''Assurance Agreement,'' and to execute any other agreements required by USDA Rural Development to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000, a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7606. Violations shall be reported to USDA Rural Development and the regional office of the United States Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise there from, but this provision shall not be construed to bar as a contractor under the grant a public-held corporation whose ownership might include a member of Congress.

10. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the grantee shall relinquish any and all copyrights and privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain a notice and be identified by language to the following effect: ''The material is the result of tax supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

12. That the grantee shall comply with 7 CFR parts 3015, 3016, or 3019, as applicable, which provide standards for use by grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

13. That it is understood and agreed that any assistance granted under this grant agreement will be administered subject to the limitations of section 516 of title V of the Housing Act of 1949, as amended, and that all rights granted to USDA Rural Development herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect USDA Rural Development's financial interest.

14. That the grantee will adopt and provide to USDA Rural Development a standard of conduct which provides that, if an employee, officer, or agency of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (i.e., partnerships, corporations, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors, or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving FLH–TA grant assistance.

15. That the grantee will be in compliance with and provide the necessary forms concerning the debarment and suspension and the drug-free workplace requirements.

PART D—USDA Rural Development Agrees

1. That it will assist the grantee, within available appropriations, with such technical and management assistance as needed in coordinating the statement of work with local officials, comprehensive plans, and any State or area plans for improving housing for farm workers.

2. That at its sole discretion, USDA Rural Development may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of the grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as the grantor may determine to be:

(a) Advisable to further the purposes of the grant or to protect USDA Rural Development's financial interests therein; and

(b) Consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and USDA Rural Development's regulations.

PART E—Attachments

The grantee's statement of work is attached to and made a part of this grant agreement. This grant agreement is subject to current USDA Rural Development regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this grant agreement to be executed by its duly authorized _____ properly attested to

and its corporate seal affixed by its duly authorized _____.

Attest: Grantee:

By: _____

_____

(Title)

Date of Execution of Grant Agreement by Grantee:

_____

United States of America

Acting through the United States Department of Agriculture

Rural Housing Service, Rural Development

By: _____

_____

Date of Execution of Grant Agreement by USDA Rural Development:

_____

Amendment to Farm Labor Housing Technical Assistance Grant Agreement

This amendment between _____, herein called the ''Grantee,'' and the United States of America acting through USDA Rural Development, hereby amends the Farm Labor Housing Technical Assistance Grant Agreement originally executed by said parties on _____.

Said grant agreement is amended by extending the ending date of the grant agreement to _____, or by making the following changes noted in the attachments hereto (list and identify proposals) and any other documents pertinent to the grant agreement which are attached to this amendment.

The grantee has caused this ''Amendment to Farm Labor Housing Technical Assistance Grant Agreement'' to be executed by its duly authorized _____ properly attested to and its corporate seal affixed by its duly authorized _____.

Attest: Grantee:

By: _____

_____

(Title)

Date of Execution of Amendment to Grant Agreement by Grantee:

_____

United States of America

Acting through the United States Department of Agriculture

Rural Housing Service, Rural Development

By: _____

_____

(Title)

Date of Execution of Amendment to Grant Agreement by USDA Rural Development:

[FR Doc. E8–1495 Filed 1–28–08; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a planning meeting of the Florida Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 2 p.m. on Thursday, February 21, 2008, at the Ying Academic Center, 36 W. Pine Street, University of Central Florida, Orlando, Florida. The purpose of the meeting is for the Committee to consider its report on the restoration of voting rights for ex-felons.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Friday, February 15, 2008. The address is Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to email their comments or who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000 or by e-mail at *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from these meetings may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated at Washington, DC, January 24, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–1512 Filed 1–28–08; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a briefing to and a planning meeting of the Kentucky Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Friday, February 15, 2008, at Room 321, Gardiner Hall, University of Louisville, Louisville, Kentucky. The purpose of the briefing is to provide information to the Committee on fair housing enforcement in Kentucky. The purpose of the planning meeting is for the Committee to consider its report on the enforcement of fair housing in Kentucky.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Friday, February 8, 2008. The address is Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth St., SW., Suite 18T40, Atlanta, GA 30303. Persons wishing to email their comments or who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000, or by e-mail at *pminarik@usccr.gov*.

Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from these meetings may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated at Washington, DC, January 24, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–1514 Filed 1–28–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1539]

Approval for Expansion of Subzone 107A, Winnebago Industries, Inc. (Motor Home Vehicles), Charles City and Forest City, IA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Iowa Foreign-Trade Zone Corporation, grantee of FTZ 107, has requested authority on behalf of Winnebago Industries, Inc., to expand the subzone and the scope of manufacturing authority under zone procedures within Subzone 107A at the company's facilities in Charles City and Forest City, Iowa (FTZ Docket 26–2007, filed 7/23/07);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 41705, 7/31/07); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the expansion of Subzone 107A as well as the scope of manufacturing authority under zone procedures within Subzone 107A at the Winnebago Industries, Inc., facilities located in Charles City and Forest City, Iowa, as described in the application and the **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 17th day of January 2008.

David M. Spooner, David M. Spooner

Assistant Secretary of Commerce For Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,
Executive Secretary.

[FR Doc. E8–1540 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1540]

Approval for Manufacturing Authority Merck Sharpe & Dohme Quimica de Puerto Rico Inc. (Pharmaceutical Products) Caguas, PR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Industrial Development Corporation, grantee of Foreign-Trade Zone (FTZ) 7, has requested manufacturing authority under § 400.32(b)(2) of the Board's regulations on behalf of Merck Sharpe & Dohme Quimica de Puerto Rico Inc. within FTZ 7 at the MOVA Pharmaceutical Corporation facility in Caguas, Puerto Rico (FTZ Docket 31–2007, filed 7/27/07);

Whereas, notice inviting public comment has been given in the **Federal Register** (72 FR 43233, 8/3/07); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority within FTZ 7 on behalf of Merck Sharpe & Dohme Quimica de Puerto Rico Inc. is approved, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 17th day of January 2008.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,
Executive Secretary.

[FR Doc. E8–1544 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2008]

Foreign-Trade Zone 124—Gramercy, LA; Application for Subzone; Baker Hughes, Inc., (Barite Grinding and Milling), Morgan City, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of South Louisiana, grantee of Foreign-Trade Zone (FTZ) 124, requesting special-purpose subzone status for the barite grinding and milling facility of Baker Hughes, Inc. (Baker Hughes) located in Morgan City, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 16, 2008.

The Baker Hughes facility (12 acres, 13 employees) is located at 100 First Street, in Morgan City, within the Morgan City Customs and Border Protection port of entry. The facility is used for manufacturing, warehousing and distribution activities related to the processing of raw barite (HTSUS 2511.10) into ground barite (up to 350,000 tons annually). Ground barite is used in the production of drilling fluids (drilling mud) and various specialty chemicals for use by the oil and gas exploration industry. Baker Hughes sources the majority of its raw barite from abroad. The duty rate on the imported raw barite is $1.25 per metric ton.

This application requests authority for Baker Hughes to conduct the activity under FTZ procedures, which would exempt the company from Customs duty payments on the imported barite used in export production. Less than one percent of production is exported. On domestic sales, the company could choose the lower duty rate (duty-free) for the imported raw barite used in manufacturing that applies to the finished product. The majority of FTZ-related savings will come from the elimination of the duty on the finished product. Baker Hughes will also realize additional savings on the elimination of duties on materials that become scrap/waste during manufacturing. The application indicates that the FTZ-related savings would improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is March 31, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 14, 2008).

A copy of the application and accompanying exhibits will be available at each of the following addresses: Port of South Louisiana, 171 Belle Terre Blvd., P.O. Box 909, LaPlace, LA 70069; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Ave, NW., Washington, DC 20230. For further information contact Christopher Kemp at *christopher_kemp@ita.doc.gov* or (202) 482–0862.

Dated: January 16, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–1536 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Extension of Time Limit for the Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 29, 2008.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0414.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2007, the Department initiated a new shipper review of New-Tec Integration (Xiamen) Co., Ltd. (''New-Tec'') covering the period December 1, 2006, through May 31, 2007. *See Hand Trucks and Certain Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 72 FR 42392 (August 2, 2007). The preliminary results of this new shipper review are currently due no later than January 22, 2008.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. See also 19 CFR 351.214 (i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214 (i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that this new shipper review involves complicated methodological issues, the examination of importer information and the evaluation of the *bona fide* nature of the company's sale. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results by 90 days, until no later than April 21, 2008. The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: January 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–1552 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Postponement of Final Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 29, 2008.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Scot Fullerton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–1386, respectively.

Postponement of Final Determination

On February 28, 2007, the Department of Commerce (''Department'') initiated the antidumping duty investigation of sodium hexametaphosphate from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China,* 72 FR 9926 (March 6, 2007) (''*Initiation Notice*''); *see also Notice of Correction of Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 11325 (March 13, 2007). On September 14, 2007, the Department published the *Preliminary Determination* in the antidumping duty investigation of sodium hexametaphosphate (''SHMP'') from the People's Republic of China. *See Preliminary Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate from the People's Republic of China, 72 FR 52544 (September 14, 2007) (''Preliminary Determination*'').

Section 735(a)(2) of the Tariff Act of 1930 (''the Act'') provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. In addition, the Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. *See* 19 CFR 351.210(e)(2).

On September 11, 2007, Hubei Xingfa Chemicals Group Co., Ltd., requested a 60-day extension of the final determination (*i.e.*, 135 days after the publication of the preliminary determination) and extension of the provisional measures. On September 28, 2007, the Department published a 60-day postponement of the final determination of the investigation of SHMP from the PRC, based on the un-extended final determination date of November 20, 2007. *See Postponement of Final Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 55176 (September 28, 2007). The Department intended to fully postpone the final determination by 135 days, pursuant to section 735(a) of the Act and 19 CFR 351.210(b)(2), but it inadvertently calculated the postponement based on the signature date of the preliminary determination, as opposed to the publication date. With this notice, we intend to fully postpone the final determination based upon the publication date of the preliminary determination.

Thus, because our preliminary determination is affirmative, and the respondent requesting an extension of the final determination and an extension of the provisional measures, accounts for a significant proportion of exports of the subject merchandise, and no compelling reasons for denial exist, based on the date of the publication of the preliminary determination (September 14, 2007), we are postponing the final determination by 135 days until January 28, 2007.[1]

This notice is issued and published pursuant to sections 777(i) and 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: January 22, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–1555 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF19

Fisheries in the Western Pacific; Western Pacific Crustacean Fisheries; 2008 Harvest Guideline

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

ACTION: Notification of harvest guideline for crustaceans.

SUMMARY: NMFS announces that the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2008 is established at zero lobsters.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS Pacific Islands Region, 808–944–2271.

SUPPLEMENTARY INFORMATION: The NWHI commercial lobster fishery is managed under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (Crustaceans FMP). The regulations at 50 CFR 665.50(b)(2) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI.

The NWHI commercial lobster fishery, which operates almost exclusively within 50 nm of the NWHI archipelago, has been closed since 2000, initially as a precautionary action to prevent overfishing of spiny and slipper lobster resources while NMFS conducted biological research and assessed the status of the lobster stocks. In 2006, Presidential Proclamation No. 8031 established the NWHI Marine National Monument (later renamed the Papahanaumokuakea Marine National Monument). Regulations implementing the Proclamation, promulgated jointly by NOAA and the U.S. Fish and Wildlife Service, prohibit the unpermitted removal of monument resources (50 CFR 404.7) and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the harvest guideline at zero lobsters for the NWHI commercial lobster fishery for calendar year 2008; thus, no harvest of NWHI lobster resources is allowed.

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

Dated: January 24, 2008

Emily H. Menashes,

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

[FR Doc. E8–1560 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF26

Atlantic Bluefin Tuna Scientific Workshop

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

ACTION: Notice.

SUMMARY: NMFS announces the date, time, and location for an informal Atlantic bluefin tuna (BFT) scientific workshop (Workshop).

DATES: The Workshop will start at 10 a.m. on Tuesday, February 5, 2008, and will conclude at 12:30 p.m., Wednesday, February 6, 2008.

ADDRESSES: The Workshop will be held at the NMFS Southeast Regional Office, 13th Avenue, South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Victor Restrepo at (305) 361–4000.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA), which authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

ICCAT's Standing Committee on Research and Statistics (SCRS) will hold an Atlantic bluefin tuna stock assessment session in Madrid, Spain in June 2008. In advance of the SCRS session, NMFS will hold an informal BFT scientific workshop to review, to discuss relevant BFT research, preparations for the stock assessments, and the timeline for submission of scientific papers to SCRS by U.S. researchers.

Dated: January 24, 2008.

Alan D. Risenhoover

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

[FR Doc. E8–1561 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE02

Endangered and Threatened Species; Initiation of a Status Review for Shortnose Sturgeon

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

ACTION: Announcement of initiation of status review; request for information; extension of comment period.

SUMMARY: We, NMFS, are extending the deadline for providing information to be used during the status review of shortnose sturgeon (Acipenser brevirostrum) under the Endangered Species Act (ESA). The initial deadline was January 29, 2008. This extension is intended to ensure that the option to submit comments electronically is available for an entire 60–day period.

DATES: Written information regarding the status of, and factors and threats affecting, shortnose sturgeon must be received by March 31, 2008.

ADDRESSES: You may submit comments, identified by 0648–XE02, by any one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- Fax: 978–281–9394, Attention: Dana Hartley.

[1] The full postponement would result in the signature day falling on January 27, 2008, which is a Sunday. Therefore, the signature day will roll over to the next business day, January 28, 2008, in accordance with our practice. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

• Mail: Information on paper, disk or CD–ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will beaccepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, NMFS, Northeast Regional Office (978) 281–9300 ext. 6514; Stephania Bolden, NMFS, Southeast Regional Office (727) 824–5312; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1410.

SUPPLEMENTARY INFORMATION: We initiated a status review of the shortnose sturgeon under the ESA on November 30, 2007 (72 FR 67712). Due to temporary difficulty in accessing the electronic Federal eRulemaking Portal at the beginning of the initial comment period, we are extending the public comment period.

Dated: January 24, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–1562 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the South Carolina Coastal Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR Part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the dates of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

Dates and Times: The South Carolina Coastal Management Program evaluation site visit will be held March 10–14, 2008. One public meeting will be held during the week. The public meeting will be held on Wednesday, March 12, 2008, at 6 p.m., at the South Carolina Department of Natural Resources, Marine Resources Research Institute Auditorium, 217 Fort Johnson Road, Charleston, South Carolina.

ADDRESSES: Copies of the state's most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for the New Jersey and Guam Coastal Management Programs (CMPs) and the Guana Tolomato Matanzas (Florida) National Estuarine Research Reserve (GTM NERR). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The State of New Jersey and the Territory of Guam were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The GTM NERR was found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

Dated: January 17, 2008.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

[FR Doc. E8–1537 Filed 1–28–08; 8:45 am]

BILLING CODE 3510–08–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, February 5, 2008, 4 p.m.–5:30 p.m.

PLACE: Corporation for National and Community Service; 8th Floor; 1201 New York Avenue, NW.; Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks
II. Consideration of Prior Meeting's Minutes
III. CEO Report
IV. Committee Reports

V. Public Comment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Monday, February 4, 2008.

Contact Person for More Information: Lisa Guccione, Senior Policy Advisor, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 10207, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6637. Fax (202) 606–3460. TDD: (202) 606–3472. E-mail: *lguccione@cns.gov.*

Dated: January 25, 2008.

Frank R. Trinity,

General Counsel.

[FR Doc. 08–403 Filed 1–25–08; 12:18 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 31, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 23, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System (IPEDS), Web-Based Collection System.

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,600.

Burden Hours: 162,610.

Abstract: IPEDS is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. IPEDS allows the National Center for Education Statistics (NCES) to describe the size of one of the nation's largest enterprises, postsecondary education, in terms of students enrolled, degrees and other awards earned, dollars expended, and staff employed. IPEDS incorporates technological improvements into the collection that enhance data submission and data availability. The IPEDS web-based data collection system was implemented in 2000–01, and it collects basic data from approximately 6,600 postsecondary institutions in the United States and the other jurisdictions that are eligible to participate in Title IV Federal financial aid programs. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 (Pub. L. 102–325)). IPEDS allows other (non-Title IV) institutions to participate on a voluntary basis, but only about 200 elect to respond.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3568. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–1538 Filed 1–28–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Rehabilitation Training—Rehabilitation Continuing Education Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority under the Rehabilitation Continuing Education Program (RCEP) to fund regional Technical Assistance and Continuing Education (TACE) centers. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2008 and later years. We take this action to improve the quantity and quality of employment outcomes for individuals with disabilities through enhanced technical assistance and continuing education for State vocational rehabilitation (VR) agencies and agency partners that cooperate with State VR agencies in providing VR and other rehabilitation services (e.g., Centers for Independent Living, Client Assistance Programs, and Community Rehabilitation Programs).

DATES: We must receive your comments on or before February 28, 2008.

ADDRESSES: Address all comments about this proposed priority to Christine Marschall, U.S. Department of Education, 400 Maryland Ave., SW., room 5053, Potomac Center Plaza, Washington, DC 20202–2800. If you prefer to send your comments through

the Internet, use the following address: *Christine.Marschall@ed.gov.*

You must include the term ''TACE Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Christine Marschall. *Telephone:* (202) 245–7429 or via Internet: *Christine.Marschall@ed.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

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

During and after the comment period, you may inspect all public comments about this proposed priority in room 5053, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Background

The RCEP has traditionally provided continuing education to employees of State VR agencies and agency partners that cooperate with State VR agencies in providing VR and other rehabilitation services. Through the RCEP the Department currently supports 11 regional programs that focus on training employees and professionals of State VR agencies, Centers for Independent Living (CILs), and Client Assistance Programs (CAPs) and 10 regional programs that focus on training professionals of Community Rehabilitation Programs (CRPs).

Over the past two years, the Department's Rehabilitation Services Administration (RSA) has enhanced its program monitoring of State VR agencies to not only evaluate program compliance, but also to assist State VR agencies improve the quantity and quality of employment outcomes for individuals with disabilities. One result of RSA's enhanced monitoring has been the ability to identify the needs of State VR agencies for technical assistance and continuing education in such areas as improving quality assurance, using program data for program improvement, and managing personnel effectively.

On March 6, 2007, the Assistant Secretary for Special Education and Rehabilitative Services solicited public comments and recommendations regarding the RSA Rehabilitation Training program through a notice published in the **Federal Register** (72 FR 9942). The public comments and recommendations received in response to this notice generally support the role of the RCEP in providing technical assistance and continuing education. Many of the comments and recommendations also support maintaining the regional model of service provision for the program because it enables each regional RCEP center to be knowledgeable about the unique demographic, economic, and service needs of the State VR agencies in its region, and to tailor its continuing education and technical assistance activities to meet those needs.

Additionally, needs assessments conducted by the Department's current RCEP grantees indicate that technical assistance and continuing education for both the State VR agency and the agency partners are needed to improve employment outcomes for individuals with disabilities.

To address the need for technical assistance and continuing education, RSA seeks to revise the structure of the RCEP. Rather than supporting two types of Regional Centers as has been done under the current RCEP model—those serving State VR agencies, CILS, and CAPs and those serving CRPs—RSA seeks to fund 10 regional Technical Assistance and Continuing Education (TACE) centers to provide technical assistance and continuing education for both employees of State VR agencies and all agency partners (e.g., CILs, CAPs and CRPs). The integration of these activities in each regional center would help ensure that State VR agencies and all agency partners are provided with consistent information and strategies that can be implemented by State VR agencies and all agency partners to improve VR service delivery and the quality and quantity of employment outcomes for individuals with disabilities. In addition, the integration of the two types of RCEPs would result in greater administrative efficiency because the RCEPs that served the State VR agencies, CILs and CAPs and the RCEPs that served the CRPs frequently developed materials and provided training on similar topics. The reduction of overhead costs resulting from combining the two types of RCEPs would enable more RSA funds to be devoted to providing technical assistance and continuing education.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority: Proposed Priority—Regional Technical Assistance and Continuing Education (TACE) Centers.

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority to establish 10 regional TACE centers to provide (1) technical assistance to State VR agencies and agency partners that cooperate with State VR agencies in providing VR and

other rehabilitation services to improve services required under the Rehabilitation Act of 1973, as amended, and (2) continuing education to employees of State VR agencies and agency partners.

Under this priority, the TACE centers must contribute to the following outcomes: Improved quality of VR services, increased effectiveness and efficiency of State VR agencies in delivering VR services, and improved quantity and quality of VR employment outcomes for individuals with disabilities. The TACE centers must contribute to these outcomes by providing technical assistance and continuing education, either directly or through contract, to employees of State VR agencies and agency partners on topics that are identified jointly by RSA and each center's advisory committee and included in the center's work plan.

Under this priority, applicants must demonstrate their ability to respond rapidly to a broad range of technical assistance and continuing education needs. Applicants must provide evidence in their applications that they have expertise, or access to subject-matter experts with experience, in conducting technical assistance and continuing education in such areas of need as the improvement of VR agencies' service delivery; practices and interventions related to specific VR populations; quality assurance; case management at the administrative and counselor level; the use of assistive technology to achieve employment goals; personnel management (e.g., staff retention strategies); fiscal management; data management; communication skills development; development of individualized plans for employment; development of VR State plans; and strategic planning.

Under this priority, each TACE center must—

1. Establish, in consultation with RSA, an annual work plan describing activities that the center will conduct to assist State VR agencies to accomplish the goals identified in their VR State plans and to achieve other performance and compliance goals identified by RSA's monitoring reports. The work plan must identify the nature and scope, including delivery means and methods, of the technical assistance and continuing education to be provided by the center;

2. Conduct an annual needs assessment to identify technical assistance and continuing education needs of State VR agencies and agency partners in its region, as applicable. Each center must base its annual needs assessment on a thorough review of VR State plans, on-site monitoring reports and annual review reports issued by RSA, other performance and compliance information available from RSA and State VR agencies, and other data, as appropriate;

3. Establish a center advisory committee to provide input on the annual needs assessments conducted by the center in accordance with paragraph (2) of this priority. In addition to the requirements in 34 CFR 385.40 for mandatory members of the center advisory committee, the committee must include representatives from Independent Living Training and Technical Assistance grantees and RSA representatives as ex-officio members.

Note: Members of minority groups are listed in 34 CFR 385.40 as one of the categories of mandatory participants on rehabilitation training advisory committees. However, the Department intends to publish a notice of proposed rulemaking (NPRM) to amend 34 CFR 385.40, which would remove the requirement that an applicant include members of minority groups on all project advisory committees. The NPRM would add a requirement that an applicant include individuals who are knowledgeable about the special needs of individuals with disabilities from diverse groups, including minority groups. The purpose of this change would be to more clearly reflect the intent of the Department that project advisory committees include individuals who are familiar with the needs of individuals with disabilities from diverse groups, rather than individuals who are just members of such groups.

4. Participate as an observer in RSA's triennial monitoring of State VR agencies in its region by attending, at a minimum, each State VR agency's monitoring exit conference in order to gain a thorough understanding of each State VR agency's technical assistance and continuing education needs;

5. Collaborate with other TACE centers to provide technical assistance and continuing education as efficiently as possible to employees of State VR agencies and agency partners that have similar needs;

6. Coordinate services with other entities that provide technical assistance to State VR agencies and agency partners, including, but not limited to, Independent Living Training and Technical Assistance grantees and Assistive Technology projects funded under the Department's Assistive Technology program; and

7. Evaluate how well each technical assistance and continuing education activity provided by the center meets a targeted area of need (e.g., the improvement of VR agencies' service delivery; practices and interventions related to specific VR populations; quality assurance), based on goals and objectives established for the activity in the center's work plan. Each center must provide data on each training and technical assistance activity it conducts, including the topic of the activity, the number and types of personnel and agencies participating in the activity, participant evaluations of the effectiveness of the activity, and any other data required by the Department. Each center must include the results of its evaluation in its annual performance report. RSA will convene an independent review panel to evaluate the work of the centers. The independent review panel will use the following performance measures: (a) The percentage of technical assistance and continuing education services provided by the center that are deemed to be of high quality; (b) the percentage of technical assistance and continuing education services provided by the center that are deemed to be of high relevance to State VR policies or practices; and (c) the percentage of technical assistance and continuing education services provided by the center that are deemed to be useful in improving State VR agency policies or practices.

Executive Order 12866

This notice of proposed priority (NPP) has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NPP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NPP, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: Potential costs of the proposed priority include costs of establishing and administrating the program, conducting the annual needs assessments, providing technical assistance and continuing education, conducting the annual evaluation, and preparing and filing required reports. The benefits of the program are improved VR employment outcomes for individuals with disabilities as a result of technical assistance and continuing education activities and decreased

administrative costs because the technical assistance and continuing education activities in each region are provided by one center rather than two centers.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program. *Applicable Program Regulations:* 34 CFR parts 385 and 389.

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/news/fedregister/index.html*.

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://http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.264A Rehabilitation Continuing Education Program).

Program Authority: 29 U.S.C. 772.

Dated: January 24, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–1528 Filed 1–28–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Electricity Delivery And Energy Reliability; Department of Energy; Notice of Intent to Establish the Electricity Advisory Committee

Pursuant to Section 9 of the Federal Advisory Committee Act, App. 2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Electricity Advisory Committee is established for a two-year period.

The Committee will provide advice to the Assistant Secretary for Electricity Delivery and Energy Reliability, Office of Electricity Delivery and Energy Reliability (DOE), on long range planning and priorities for the modernization of the Nation's electricity delivery infrastructure.

The Secretary of Energy has determined that establishment of the Committee is required to conduct business of the Department of Energy and is in the public interest in connection with the performance of duties imposed upon the Department of Energy.

The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Mr. David Meyer at 202–586–3118.

Issued in Washington, DC on January 24, 2008.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E8–1503 Filed 1–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 21, 2008. 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

6 p.m. Call to Order, Introductions, Review of Agenda, and Approval of November Meeting Minutes.
6:10 p.m. Deputy Designated Federal Officer's Comments.
6:30 p.m. Federal Coordinator's Comments.
6:35 p.m. Liaisons' Comments.
6:45 p.m. Presentations.
7 p.m. Public Comments.
7:15 p.m. Administrative Issues.
8 p.m. Final Comments.
8:15 p.m. Adjourn.
Breaks Taken As Appropriate

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site *http://www.pgdpcab.org/minutes.htm*.

Issued at Washington, DC on January 24, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–1496 Filed 1–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 14, 2008; 10 a.m. to 6 p.m. and Friday, February 15, 2008; 8:30 a.m. to 4 p.m.

ADDRESSES: Hotel Palomar, 2121 P St, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, February 14, 2008, and Friday, February 15, 2008.

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the High Energy Physics Advisory Panel Web site at *http://www.science.doe.gov/hep/hepap.shtm.* Minutes will also be available by writing or calling John Kogut at the address and phone number listed above.

Issued at Washington, DC on January 24, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–1501 Filed 1–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 23, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP97–255–080.
Applicants: TransColorado Gas Transmission Company.
Description: TransColorado Gas Transmission Co. submits Eighteenth Revised Sheet 21 and Fourteenth Revised Sheet 22B to FERC Gas Tariff, First Revised Volume 1 etc., in compliance with FERC's 11/29/07 Order.
Filed Date: 01/17/2008.
Accession Number: 20080123–0025.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 29, 2008.

Docket Numbers: RP97–255–080.
Applicants: TransColorado Gas Transmission Company.
Description: TransColorado Gas Transmission Co., LLC submits marked version of the 1/17/18 filing of two agreements with EnCana Marketing USA, Inc in compliance with FERC's 11/29/07 Order.
Filed Date: 01/18/2008.
Accession Number: 20080123–0024.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP99–176–150.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America submits Amendment 1 to the Firm Transportation and Storage Negotiated Rate Agreement with CenterPoint Energy Minnesota Gas.
Filed Date: 01/18/2008.
Accession Number: 20080123–0022.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP99–301–199.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits amendments to an Amended and Restated Minimum Delivery Pressure and Maximum Delivery Level Agreement with Wisconsin Electric Power Company.
Filed Date: 01/18/2008.
Accession Number: 20080123–0023.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP05–157–009.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Saltville Gas Storage Company, LLC submits Sub Original Sheet 20 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 2/18/08.
Filed Date: 01/18/2008.
Accession Number: 20080123–0021.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP05–422–025.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Co's CD containing its refund report.
Filed Date: 01/18/2008.
Accession Number: 20080118–4013.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP07–328–001.
Applicants: Transcontinental Gas Pipe Line Corporation.
Description: Transcontinental Gas Pipe Line Corporation tendered for filing a compliance filing to the Commission's order issued on March 29, 2007 in the above referenced proceeding, concerning the ''Eminence Storage Loss'' reflected in Transcontinental's March 1, 2007 filing.
Filed Date: 04/30/2007.
Accession Number: 20070430–5025.
Comment Date: 5 p.m. Eastern Time, Tuesday, January 29, 2008.

Docket Numbers: RP08–109–002.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits a filing proposing additional Firm Deferred Delivery Storage Flexibility by allowing shippers to reduce their scheduled firm withdrawal & injection quantities etc.
Filed Date: 01/18/2008.
Accession Number: 20080123–0020.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP08–164–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company submits First Revised Sheet 650 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1, to become effective 2/16/08.
Filed Date: 01/16/2008.
Accession Number: 20080117–0038.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 29, 2008.

Docket Numbers: RP08–167–000.
Applicants: TransColorado Gas Transmission Company.
Description: TransColorado Gas Transmission Co, LLC submits Original Sheet 0 and 1 *et al.* to its FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 01/18/2008.
Accession Number: 20080123–0018.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP08–168–000.

Applicants: Trailblazer Pipeline Company.

Description: Trailblazer Pipeline Company submits Original Sheet 0 and 1 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 12/28/07.

Filed Date: 01/18/2008.

Accession Number: 20080123–0026.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Docket Numbers: RP08–169–000.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits Eighth Revised Sheet 11 to its FERC Gas Tariff, Original Volume 1, to be effective 2/17/08.

Filed Date: 01/18/2008.

Accession Number: 20080123–0019.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 30, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–1513 Filed 1–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Record of Decision and Floodplain Statement of Findings for the Trinity Public Utilities District Direct Interconnection Project (DOE/EIS–0389)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: The Western Area Power Administration (Western) intends to construct the Trinity Public Utilities District (PUD) Direct Interconnection Project (Project) in Trinity County, California. Consumers in the Trinity PUD service area routinely experience nearly 20,000 consumer hours per year in outages, according to the Trinity PUD. In the winter, many of the outages last three to four days before power can be restored. Western's Project would improve power system reliability in the area by providing a direct interconnection between Trinity PUD and Western's transmission system at the Trinity Power Plant. Western proposes to remove about 5.3 miles of existing 12-kilovolt (kV) distribution line, and construct, operate, and maintain about 16 miles of new 60-kV transmission line, a three-way switching structure and associated equipment, and a new switchyard. The Project would connect to Trinity PUD's system at its Lewiston Substation and at the new Weaverville Switchyard. Western is the lead Federal agency, and the U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM), and U.S. Bureau of Reclamation (Reclamation) are cooperating agencies that participated in the preparation of the environmental impact statement (EIS). Full implementation of the decision to construct this Project is contingent upon obtaining all applicable permits and approvals.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Tuggle, Natural Resources Manager, Sierra Nevada Customer Service Region N1400, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710; telephone (916) 353–4549; e-mail *tuggle@wapa.gov.* Copies of the EIS are available from Mr. Tuggle. For information about the DOE National Environmental Policy Act (NEPA) process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western prepared an environmental impact statement entitled ''Environmental Impact Statement; Trinity Public Utilities District Direct Interconnection Project'' (DOE/EIS–0389) on its proposal to construct, operate, and maintain power transmission facilities in Trinity County, California. Portions of the proposed Project would cross lands managed by the USFS, BLM, and Reclamation. Western is the lead Federal agency, as defined by 40 CFR 1501.5; USFS, BLM, and Reclamation are cooperating agencies that participated in the preparation of the EIS. The EIS is intended to satisfy the requirements of NEPA for each Federal agency's decision related to the siting, construction, operation, and maintenance of the proposed action. The decisions to be made by Western, USFS, BLM, and Reclamation regarding the proposed action, also referred to as the Project, are quite different and specific to each agency's needs and requirements. Therefore, each agency intends to issue a separate Record of Decision (ROD) based on the information presented in the EIS.

The Trinity PUD is a small utility district in northern California serving approximately 16,000 consumers. The Trinity PUD is connected to the California Independent System Operator-controlled electrical grid by 60-kV transmission facilities owned and maintained by Pacific Gas and Electric Company (PG&E). Although transmitted through the PG&E system, the Trinity PUD receives 100 percent of its power from Western. The Trinity River Division (TRD) Act provides for the construction, operation, and maintenance of the TRD facilities of the Central Valley Project, composed of the Trinity Dam, Lewiston Dam, and Clear Creek Tunnel. 69 Stat. 719 (1955). The

TRD Act also authorizes Western to construct, operate, and maintain transmission facilities to deliver Federal power and to furnish energy in Trinity County. 69 Stat. 719 (1955).

Consumers in the Trinity PUD service area routinely experience nearly 20,000 consumer hours per year in outages, according to the Trinity PUD. In the winter, many of the outages last three to four days before power can be restored. Restoring service is difficult because of the remote location and rough terrain.

Western's proposed Project would improve power system reliability in the area by providing a direct interconnection between Trinity PUD and Western's transmission system at the Trinity Power Plant. Western proposes to remove about 5.3 miles of existing 12-kV distribution line, and construct, operate, and maintain about 16 miles of new 60-kV transmission line, a three-way switching structure and associated equipment, and a new switchyard. Trinity PUD will be partnering in restoring this line during emergency outages.

Alternatives Considered

Proposed Action

Western proposes to construct the Trinity PUD Direct Interconnection Project in Trinity County, California, in portions of Townships 33 and 34 North, and Ranges 8 and 9 West, Mt. Diablo Meridian. The main component of the Project would be an approximately 16-mile-long, 60-kV overhead transmission line called the Trinity County Direct Interconnection, which would connect Western's Trinity Substation to a new Weaverville Switchyard and one mile of tap line to connect to Trinity PUD's Lewiston Substation. The proposed action would remove 5.3 miles of the existing Trinity-Lewiston 12-kV distribution line and utilize the vacated right-of-way (ROW) for the new 60-kV transmission line. New ROW would be needed for the rest of the line. At about Mile 6.5 on the transmission line, a tap line would depart from a three-way switching structure and proceed south to connect with Trinity PUD's Lewiston Substation. The Project would terminate at a new small switchyard near State Route 299 south of Weaverville, and would connect to existing lines at that location. Use of existing access roads would be maximized, with improvements made where needed, and a total of about two miles of new short spurs would be constructed. A more detailed description of the proposed action by segment follows.

For Segment 1, Western would remove the existing conductor and poles for 5.3 miles of the Trinity-Lewiston 12-kV distribution line. The existing cleared ROW for the Trinity PUD line would then be expanded from about 20-feet wide to 80 feet to accommodate installation of the new 60-kV transmission line. Segment 1 would follow the existing ROW from Trinity Substation down river approximately 6.5 miles toward Lewiston, terminating at a steel pole three-way switching structure located about 1.5 miles west of Lewiston Dam. Segment 1 would cross the Trinity River at two locations: below the Trinity Dam and below the Lewiston Dam near the Trinity River Fish Hatchery. The existing ROW runs through the steep and rugged terrain of the Shasta-Trinity National Forest, crossing ridge tops and gullies. The land in Segment 1 is primarily National Forest System land administered by the USFS, and portions of it are within the boundaries of the Shasta-Trinity National Recreation Area. However, about one mile of Segment 1 is administered by Reclamation, 0.5 mile is owned by Sierra Pacific Industries (SPI), 0.25 mile is privately owned, and a small portion of the Segment crosses BLM land.

For Segment 2, Western would acquire an 80-foot ROW to build a new 60-kV transmission line, approximately one mile in length, south from the three-way switching structure near Mile 6.5 to the existing Trinity PUD Lewiston Substation. The switching structure would accommodate the incoming line from Trinity Substation (Segment 1), the tap line down to the Lewiston Substation (Segment 2), and the new transmission line segment to the proposed Weaverville Switchyard (Segment 3). Segment 2 would parallel an existing Trinity PUD distribution line, which runs south along Trinity Dam Boulevard and Rush Creek Road, and along the Trinity River, to Lewiston Substation. Segment 2 crosses a mix of USFS, BLM, SPI, and other privately-owned land. Existing access roads associated with the distribution line would be used, with newly constructed short spurs up to the new line from the existing access roads. Trinity Dam Boulevard and Rush Creek Road follow the Trinity River on the west side in this location, and the existing Trinity PUD distribution line is west of the road. The proposed tap line would be located further to the west, west of the Trinity PUD line. The Trinity PUD line would thus be between the proposed line and these roads.

For Segment 3, Western would acquire an 80-foot wide ROW to build a new 60-kV transmission line from the switching structure near Mile 6.5 near Lewiston to a new switchyard to be constructed near Weaverville. Segment 3 would be approximately 8.5 miles long. Approximately one mile of Segment 3 would parallel the existing PG&E Cottonwood-Humboldt 115-kV Transmission Line. The Segment 3 corridor would also run through steep and rugged terrain and would closely follow an existing logging road. About 0.25 mile is owned by other private land owners. The land in Segment 3 is owned primarily by SPI and managed for timber production. The remaining land is managed by BLM. The proposed action would require new ROW and use existing and upgraded existing access roads and new, short spur roads.

As part of the proposed action, Western would also construct a small 90-by-110-foot switchyard south of the town of Weaverville. Weaverville Switchyard would be located at the southern terminus of the transmission line and would be located approximately two miles south of the center of Weaverville and just east of State Route 299. The new switchyard would allow the Project to connect with the existing PG&E radial Trinity-Douglas City 60-kV Transmission Line. The existing PG&E line would be acquired by Trinity PUD. Permission to occupy the proposed Weaverville Switchyard would be initially obtained through a ROW grant from the BLM. Eventually, Western would request conveyance of the site through sale, pursuant to section 203 of the Federal Land Policy and Management Act (FLPMA; 43 U.S.C. 1713), as applicable. Access to the proposed Weaverville Switchyard would be off State Route 299, using an abandoned section of that highway.

The 60-kV new transmission line would be constructed on single wood poles ranging from 50 to 105-feet tall. The span between poles would average 350 feet, ranging from a minimum of 100 feet to a maximum of 500 feet, with some longer or shorter spans depending on topography and other factors. There would be an average of 16 pole locations per mile, with an approximate total of 261 pole locations for the entire Project. About 11 structures would be three-pole turning structures. The turning structures and approximately 95 additional single poles would be guyed with wire cable to anchors in the ground. The anchors would consist of steel screw anchors in soil, an eight-foot anchor rod with plate in fractured rock, or a grouted rod in solid rock. Anchors would be buried approximately six feet in the ground.

In addition to the wood poles, up to 10 self-supporting self-rusting steel structures, directly embedded or with

rectangular concrete foundations, may be required for large spans or for increased stability. A steel three-way switch structure would be installed near Mile 6.5, west of the Trinity River Fish Hatchery. The switch and associated operating shafts and mechanism housing would be installed on the structure. The switch structure would be constructed of Cor-ten steel, which is self-rusting to a flat, dark brown surface, resulting in a less visible structure.

Other Alternatives

Western considered alternatives during the Project planning process. System and route alternatives, as described below, were considered prior to defining the proposed action. Among Western's planning objectives were to locate the new transmission line along the shortest route with the fewest landowners and to utilize existing transmission corridors and access roads to the maximum extent possible. The proposed action met the purpose and need of Western and the participating agencies.

Four main system alternatives were developed that could possibly meet the objective of improving electric reliability by establishing a new direct interconnection:

System Alternative 1 consisted of parallel Western and PG&E transmission lines via a new 230- to 60-kV transmission interconnection between Western's 230-kV transmission system at Trinity Dam and near the Trinity PUD's Douglas City 60-kV Substation. This alternative would result in an overloaded element because of the parallel connection between Western and PG&E, as well as overloads due to contingency conditions. The levels of overloading suggest that the current carrying capacity of a 60-kV transmission line would be inadequate for a configuration of this type. Increasing the equipment voltage would greatly increase Project costs; therefore, this alternative would not be feasible. This alternative would not improve the current operational concerns.

System Alternative 2 was the same as Alternative 1, except that Western's and PG&E's transmission lines would not be operated in parallel. The two lines would be isolated via a set of disconnect switches located between PG&E's Trinity Substation and Trinity PUD's Mill Street Substation. This configuration would allow Trinity PUD to operate as a radial load served solely by Western's transmission system. This alternative would result in no overloads during normal or contingency operations. However, should an outage occur on this transmission line, Trinity PUD loads would be without power until Western service could be restored or until PG&E could close the switches between Trinity Substation and Mill Street Substation.

Under System Alternative 3, Western's and PG&E's transmission lines would run in parallel via an interconnection near Western's 230-kV J.F. Carr Substation. This design would consist of looping PG&E's Cottonwood-Trinity 115-kV transmission line into a new 230/115-kV substation in or adjacent to Western's Carr Substation. This alternative would result in no overloads during normal operations, but it would result in severe overloads during contingency operations, suggesting that the 115-kV transmission line would have inadequate current-carrying capacity for contingency situations. Increasing the equipment voltage would greatly increase the Project costs; therefore, this alternative was not found to be feasible.

System Alternative 4 would be a pair of parallel Western and PG&E transmission lines. It would involve looping PG&E's Cascade-Lewiston 60-kV transmission line into a new 230/60-kV substation in or adjacent to Western's J.F. Carr 230-kV Substation. This alternative would result in overloads for both normal and contingency operations, in some cases in excess of 500 percent, suggesting that the 115-kV transmission line would have inadequate current-carrying capacity for contingency situations. Increasing the equipment voltage would also greatly increase Project costs; for these reasons this alternative would not be feasible.

The system design selected for the Project was the only system alternative found to be technically viable and economically feasible.

Other alternatives considered included several different routings for the Project. Four main routing alternatives were considered, which are summarized below:

Routing Alternative 1 was an alternative alignment of Segment 1, from the Trinity Power Plant to the Lewiston Substation. With this alternative alignment, the line would follow along County Road 105, on the west side of the Trinity River from Trinity Dam to Lewiston Lake. There is an existing 12-kV distribution line along this route, the ''Westside'' line. However, this line is being used to serve existing residential customers in the vicinity and cannot be overbuilt with the proposed line. Overbuilding this line would cause problems for the existing customers, including a long outage time during replacement of the line. The existing 12-kV line passes over mobile home residences along its route. This situation is allowed for distribution-level lines, but buildings under transmission lines are not allowed by code. The existing line is already closer to County Road 105 than the standards in the Whiskeytown-Shasta-Trinity National Recreation Area (36 CFR 292.13(c)(1)). A transmission line on the existing ROW or adjacent to it would not be consistent with the 150-foot buffer zone established by this regulation. Additionally, a 60-kV line would require more ground clearance and would have to be built higher, requiring new ROW. This alignment would also disturb a larger amount of residential, recreational, and wildlife habitat lands than would the proposed action, and it would require additional rerouting of the line. The USFS also preferred a location of the transmission line on the east side of the Trinity River within the existing distribution line ROW, which would place it within a previously disturbed area; create less impacts to residential, recreational, and wildlife habitat lands; create less new visual resource elements; and be more consistent with USFS land management guidelines. The ''Westside'' routing option was found to be associated with a number of serious issues at the concept level, and since it offered no offsetting advantages, it was dropped from further consideration.

Routing Alternative 2 is an alternative alignment of Segment 2, the tap line from Lewiston Tap to Lewiston Substation. With this alternative alignment, the tap line would follow a similar path to Segment 2 of the Project, but it would be located further west of Trinity Dam Boulevard. This option was briefly considered to potentially reduce visual impacts from Trinity Dam Boulevard. This alignment would require more clearing and access road construction and a longer tap line than would the proposed action, and would result in more impact to undisturbed and recreational land.

Segment 2, as described above for the proposed action, would parallel an existing Trinity PUD distribution line along Trinity Dam Boulevard. Existing access roads would be used, thereby limiting the need for additional clearing and access road construction. The route would also be shorter than for Routing Alternative 2. The USFS preferred a more eastern location of the tap line adjacent to an existing Trinity PUD line, which would place it within a previously disturbed area with existing access roads; create less impact to recreational lands; and be more consistent with USFS land management guidelines. Since field investigation

determined that the routing option did not offer improved visual screening sufficient to warrant incurring the increased disturbance impacts, this alignment alternative was not pursued further.

Routing Alternative 3 is an alternative alignment of the western terminus of the line (Segment 3) that would cross further north than described for the proposed action. This alignment was initially part of the proposed action, as it would parallel the PG&E Cottonwood-Humboldt 115-kV transmission line, consolidate ROWs, and utilize existing PG&E access roads. However, for the past several years, Trinity County has been considering replacing the existing Weaverville Airport with a new airport at a new location. This alternative alignment would pass through the new airport location favored by Trinity County. To avoid compromising this possible airport location, Routing Alternative 3 was dropped from further consideration.

Western continued to investigate possible alternatives to the proposed action even as the Draft EIS was published. Routing Alternative 4, an underwater cable alternative that would replace Segment 1, was identified and evaluated for viability. Under this alternative, the 60-kV line would exit the Trinity Substation and immediately change into an underwater cable as it entered the Trinity River next to the substation. The underwater cable would continue downstream in the river (actually the upper reaches of Lewiston Lake), extend through most of Lewiston Lake, and exit the lake at a point nearest to the three-way switch location west of the fish hatchery. This alternative would end at the three-way switch location.

Advantages of this alternative would include the elimination of both Trinity River crossings, avoidance of all the rugged terrain through the Shasta-Trinity National Forest, and avoidance of impacts to terrestrial species in Segment 1. However, a number of technical issues related to laying and maintaining an underwater cable were identified. Preliminary estimates of the costs of materials indicated that underwater cable would be prohibitively expensive for small projects like the proposed action, even before the additional costs of resolving the technical issues were known. Since power system reliability is a key component of Western's purpose and need, and the costs of this alternative were not economically feasible, the underwater alternative was determined not to be viable, and it was eliminated from further consideration.

No Action Alternative

Under the no action alternative, no upgrades or rebuilds to the existing transmission line system would be constructed in the Trinity area, and the existing 12-kV distribution line would be left in place. For the PG&E lines currently serving the Trinity PUD load, structures and hardware would be maintained, repaired, and/or replaced as required during routine maintenance activities or in the event of emergency outages of the transmission lines. Repairs and maintenance would increase in frequency as the transmission lines aged.

Implementing the no action alternative would preclude most of the anticipated effects to the environment that would be associated with the Project. Long-term adverse socioeconomic impacts might occur as a result of the no action alternative, because regional electric demands would not be met and unreliable delivery and shortages would continue to occur.

Under the no action alternative, other actions and construction activities with associated adverse environmental effects could be required to improve the electric system and provide reliable electric power in the area. Ongoing maintenance activities related to the existing transmission lines, including vegetation management, would have continuing visual and environmental effects on a periodic basis.

Agency Preferred Alternative

After reviewing potential environmental impacts, Western identified the proposed action as the Agency Preferred Alternative. The proposed action would result in more environmental impact than the no action alternative but, with committed mitigation, no impacts were found to be significant.

Public Involvement

A Notice of Intent (NOI) describing the proposed action was published in the **Federal Register** (FR) on June 19, 2006 (71 FR 35266). The NOI announced the intent to prepare an EIS on the proposed Project, described the proposal, provided scoping meeting locations and dates, started a 30-day scoping comment period, and provided contacts for further information about the proposed Project and for submitting scoping comments. In addition to the NOI published in the FR, a local NOI newsletter was sent to everyone on the Project mailing list, which included agencies, groups, tribes, and local landowners. Advertisements were also published in local newspapers to announce the upcoming public scoping period and meetings and provide contacts for comments.

The FR notice, the local NOI, and the newspaper ads announced a 30-day comment period for scoping the EIS. During the 30-day comment period, Western held two public scoping meetings: on July 10, 2006, at the Best Western Victorian Inn, Weaverville, California, and on July 11, 2006, at the Oxford Suites, Redding, California. Two comments were received from one commenter during the scoping period. The Project was also listed in the USFS Schedule of Proposed Actions (SOPA) beginning in April 2005. The SOPA is available online at *http://www.fs.fed.us/sopa/*.

The Draft EIS was circulated to Federal, State, regional, and local agencies, tribes, and interested individuals and organizations that may have wished to review and comment on it. Publication of the Draft EIS marked the beginning of a 45-day public review period that ended March 26, 2007. Western held public hearings during the Draft EIS review period on March 6, 2007, at the Best Western Victorian Inn in Weaverville, California, and on March 7, 2007, at the LaQuinta Inn in Redding California. These hearings were also announced by newspaper ads and direct mailings to the Project mailing list. The hearings were part of the Western's continuing efforts to provide opportunities for public participation in the decision-making process. Western received 18 written comment letters that represented 16 different individuals, and public and private organizations. Two individuals also provided comments orally at the public hearing in Weaverville. No members of the public attended the hearing in Redding.

A number of issues pertaining to the analyses in the Draft EIS were raised in public comments. Among these issues were: (1) Concerns regarding erosion control to prevent the sedimentation of streams as a result of construction traffic going over stream crossings, (2) Specific permitting and mitigation measures addressing such erosion, (3) Estimation of the extent of direct and cumulative impacts from the proposed Project, and (4) Analysis of impacts to the northern spotted owl (*Strix occidentalis caurina*). These issues, along with other comments, were addressed in the Final EIS. No additional comments were received during the Final EIS waiting period.

Environmental Impacts

The analysis in the EIS demonstrated that the Project would have no

environmental impact or minor impacts on geology, land use, paleontological resources, public health and safety, socioeconomics, environmental justice, and wilderness. Temporary and less-than-significant environmental impacts associated with construction activities were identified for air quality, noise, hazardous materials, traffic and transportation, and recreation. Potentially long-term significant environmental impacts were described for biological resources, cultural resources, soils, and water resources.

For biological resources, the principal concern is for potential impacts to the northern spotted owl and its habitat, and anadromous fish species below Lewiston Dam. The USFS conducted section 7 consultation with the U.S. Fish and Wildlife Service (USFWS), and received a Biological Opinion on November 5, 2007. The Biological Opinion concluded that, compliance with the stipulated terms and conditions, the proposed action is not likely to destroy or adversely modify designated critical habitat for the northern spotted owl, and may affect but is not likely to adversely affect the northern spotted owl and bald eagle. Western conducted section 7 consultation with the National Marine Fisheries Service (NMFS) on listed anadromous fish species. With a July 11, 2007, letter, NMFS concurred with a ''may affect, but is not likely to adversely affect'' determination for the federally threatened Southern Oregon/Northern California Coast coho salmon or its habitat, and for delineated Essential Fish Habitat for Pacific Coast salmon, which includes both coho and Chinook salmon.

Cultural resources Class III surveys were conducted on the area of potential effect defined for the Project. No prehistoric sites were found, but 21 historical sites mostly associated with historic mining activities were recorded. Western intends to avoid all of these sites to the extent possible, but two sites may be impacted by the Project. Western will mitigate impacts on any historic properties that may be adversely affected in consultation with the State Historic Preservation Office (SHPO) and affected land management agencies. A signed Programmatic Agreement among Western, the Federal land management agencies, and the SHPO will govern any remaining section 106 consultation activities, including any change in anticipated Project impacts or new cultural resources discoveries made during construction.

For soils, the main concern is sedimentation from disturbed areas. The Project has been designed to minimize ground disturbance by using existing ROW, using existing access roads, locating new ROW adjacent to existing access roads, and by limiting the need for new temporary access roads. The Federal land management agencies have extensive experience with erosion control, and have developed standard environmental protection measures found to be effective in minimizing erosion in the local area. These measures are described and committed to in the EIS, and would prevent significant erosion from occurring. In addition, a cumulative watershed analysis was conducted and is included in the EIS. Access road improvements on existing access roads, such as grading ruts and installing water bars to Federal land management agency standards, may actually reduce current levels of erosion and sedimentation from this source.

Water resources concerns are directly related to erosion and sedimentation. Limiting erosion and sedimentation as discussed above will minimize the risk of sediment input into water bodies. Crossings of drainages and streams will be coordinated with and permitted by the U.S. Army Corps of Engineers and State Regional Water Quality Control Board, and Western will comply with any conditions specified in those permits. In addition, the Federal land management agencies have drainage crossing requirements and best management practices that will govern crossings in their respective jurisdictions. In general, Western's approach will be to limit any disturbance in drainage crossings to the minimum necessary for safe equipment passage. In most cases, access will be via existing access roads that have low water crossings.

Construction, operation, and maintenance would be in compliance with the requirements of the USFS, BLM, Reclamation, U.S. Army Corps of Engineers, and State Regional Water Quality Control Board. All of these agencies have specific requirements as part of their respective approval and permitting processes. In addition, the EIS identified extensive best management practices and mitigation measures, all of which are committed to with this ROD and Western's Mitigation Action Plan (MAP). With implementation of these requirements and measures, all identified potential impacts would be reduced to less-than-significant levels.

Mitigation Measures

All measures identified in the EIS to minimize impacts from the transmission system additions have been adopted. Table 2–2 in section 2.6.1 of the EIS includes an extensive listing of specific mitigation measures by resource. In addition, sections 2.6.2, 2.6.3, 2.6.4, and 2.6.5 of the EIS list the environmental protection measures of Western, USFS, BLM, and Reclamation, respectively. Many of these mitigation measures and environmental protection measures are related to the four most sensitive resources discussed above. All of these measures have been consolidated into Western's MAP, which assigns responsibility for and tracks the implementation of these commitments. The MAP also includes expected terms and conditions for the various permits necessary for the Project, such as the 28 general conditions for a Nationwide 12 section 404 permit.

Western is the lead Federal agency for compliance with section 106 of the National Historic Preservation Act. Western's preferred form of mitigation is to avoid all identified sites. To the extent possible, cultural sites determined eligible for the National Register in consultation with the California SHPO and interested tribes will be avoided by Project activities. Cultural sites that cannot be avoided will be mitigated in accordance with the Programmatic Agreement developed for the proposed Project, which will govern all remaining activities necessary for section 106 compliance.

The USFS is the lead Federal agency for compliance with section 7 of the Endangered Species Act, as amended. A biological assessment was prepared and submitted to the USFWS with a determination that the Project ''may affect but is not likely to adversely affect'' any candidate, proposed, or listed species. The USFWS Biological Opinion of November 5, 2007, includes terms and conditions which will be complied with as additional mitigation to avoid impacts to threatened, endangered, candidate, or proposed species.

Floodplain Statement of Findings

In accordance with 10 CFR part 1022, Western considered the potential impacts of the Project on floodplains and wetlands. The Project area is located in a mountainous region with incised drainage channels and some permanent streams. The transmission line in Segment 2 would span the 100-year floodplain of Rush Creek. Rush Creek at this location is considered Zone A, a special flood hazard area inundated by 100-year floods. No base flood elevations have been determined for this location. The 500-year floodplain areas are located south of the

Project ROW, also along Rush Creek. All remaining portions of the Project ROW are located in Zone X, areas determined to be outside the 500-year floodplain. Construction of the Project would not substantially alter the normal drainage patterns or affect runoff rates because drainage patterns would not be altered, use of existing roads would be maximized, and the line would span the floodplains. Even if poles were to be located in a floodplain area, they would not contribute to the impedance of flood flows in this heavily forested area. No wetlands would be affected by the construction or operation of the Project.

Mitigation Action Plan

A MAP will be developed in accordance with 10 CFR 1021.331 that addresses mitigation commitments described above. The MAP will explain how the mitigation will be planned and implemented and will be available upon request.

Decision

Western's decision is to construct the Trinity PUD Direct Interconnection Project as described above and in the EIS. Western will construct, own, operate, and maintain the transmission line and associated facilities.

This decision is based on the information contained in the ''Environmental Impact Statement; Trinity Public Utilities District Direct Interconnection Project'' (DOE/EIS–0389); (Draft EIS issued February 2007, and Final issued November 2007). This ROD has been prepared in accordance with Council on Environmental Quality regulations for implementing NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508) and DOE Procedures for Implementing NEPA (10 CFR part 1021), and DOE's Floodplain/Wetland Review Requirements (10 CFR 1022). Full implementation of this decision is contingent upon the Project obtaining all applicable permits and approvals.

Dated: January 15, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–1505 Filed 1–28–08; 8:45 am]

BILLING CODE 6450–01–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 February 13, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Lawrence W. Jochim Revocable Trust, Lawrence W. Jochim as trustee and individually; Cindy Jochim and Richard Jochim, all of Bigfork, Montana; Todd Jochim, Lakeside, Montana; Lesley Jungers, Seeley Lake, Montana; Karla Langlois, Missoula, Montana; and Marcus Jochim and Beverly Jochim, both of Inverness, Montana, acting as a group in concert, to increase the voting control of Flathead Holding Company of Bigfork, Montana, and its subsidiary Flathead Bank of Bigfork, Bigfork, Montana.

2. Gib S. Nichols Living Trust and Sarah E. Nichols Living Trust, Gib Nichols and Sarah Nichols as trustees of each trust and individually, Vancouver, Washington; James Brendan Nichols, West Linn, Oregon; Shaun Nichols, Tucson, Arizona; Norris D. Nichols, Helena, Montana; Karyl Arndt, Aurora, Colorado; and Roseanne Heser, Mahtomedi, Minnesota, acting as a group in concert, also have applied to increase voting control of Flathead Holding Company of Bigfork, Bigfork, Montana, and its subsidiary Flathead Bank of Bigfork, Bigfork, Montana.

Board of Governors of the Federal Reserve System, January 24, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–1500 Filed 1–28–08; 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: 12 p.m., Monday, January 28, 2008.

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, January 18, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 08–408 Filed 1–25–08; 1:59 pm]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all

bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 13, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First Farmers & Merchants Corporation, to retain 100 percent of the voting shares of Maury Tenn Properties, Inc., both of Columbia, Tennessee, and thereby continue to engage in making, acquiring, brokering, or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, January 24, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–1498 Filed 1–28–08; 8:45 am]

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 No.	Acquiring	Acquired	Entities
Transactions Granted Early Terimination—01/03/2008			
20080453	Gridiron Capital Fund, L.P	Kim Alfreds	Electronic Systems Protection, Inc.; ESP International; Power Quality Innovations, Inc.
20080454	Gridiron Capital Fund, L.P	Tom Weickardt	Electronics Systems Protection, Inc.; ESP International; Power Quality Innovations, Inc.
20080459	JDS Uniphase Corporation	American Bank Note Holographics, Inc	American Bank Note Holographics, Inc.
Transactions Granted Early Termination—01/04/2008			
20080408	Harbinger Capital Partners Offshore Fund I, Ltd.	Williams-Sonoma, Inc	Williams-Sonoma, Inc.
20080448	Warhol Trust	Exigen, Ltd	Exigen Amalgamation Company Ltd.
20080449	Matisse Trust	Exigen, Ltd	Exigen Amalgamation Company Ltd.
20080457	The British United Provident Association Limited.	Health Dialog Services Corporation	Health Dialog Services Corporation.
20080460	Unitrin, Inc	Primesco, Inc	Primesco, Inc.
20080463	Quad-C Partners VII, L.P	Linsalata Capital Partners Fund IV, L.P	Augusta Sportswear Holding Company.
20080473	TPG Partners V, L.P	Axcan Pharma Inc	Axcan Pharma Inc.
20080474	SureWest Communications	Seaport Capital Partners III AIV, L.P	Everest Broadband, Inc.
20080475	Myria Acquisition Inc	Knight Holdco LLC	MidCon LLC.
20080478	Angus Holdco	Inspicio plc	Inspicio plc.
20080480	MatlinPatterson Global Opportunities Partners III L.P.	XLHealth Corporation	XLHealth Corporation.
20080482	South Texas Distributors, Inc	J. Robert Brown	Desert Eagle Distributing Company of New Mexico, LLC; Desert Eagle Distributing of El Paso, Inc.; Desert Eagle Holding Company, LLC; Eagle West Distributing, LLC; East West Distributing New Mexico, LLC.
20080483	South Texas Distributors, Inc	Clyde E. Scott	Desert Eagle Distributing Company of New Mexico, LLC; Desert Eagle Distributing of El Paso, Inc.; Desert Eagle Holding Company, LLC; Eagle West Distributing, LLC; Eagle West Distributing New Mexico, LLC.
20080487	Triton Fund II LP	Evonik Industries AG	RUTGERS Chemical GmbH.
20080488	Bain Capital Fund X, L.P	Quintiles Transnational Corp	Quintiles Transnational Corp.
20080497	3i Group plc	Quintiles Transnational Corp	Quintiles Transnational Corp.
20080499	TPG Partners V, L.P	Quintiles Transnational Corp	Quintiles Transnational Corp.
20080503	Harbinger Capital Partners Offshore Fund I, Ltd.	Calpine Corporation	Calpine Corporation.
20080504	Harbinger Capital Partners Special Situations Offshore Fund.	Calpine Corporation	Calpine Corporation.
20080505	Reckitt Benckiser Group, PLC	Adams Respiratory Therapeutics, Inc	Adams Respiratory Therapeutics, Inc.
20080506	Berry Plastics Group, Inc	Atlantic Equity Partners III, L.P	Captive Holdings, Inc.

Trans No.	Acquiring	Acquired	Entities
20080508	Coventry Health Care, Inc	Wesley J. Brockhoeft	Mental Health Associates, Inc.; Mental Health Network Institutional Services, Inc.; Mental Health Network Institutional Services, LP; WorklLife Solutions, Inc.
20080513	Dennis B. Gillings, Ph.D	Quintiles Transnational Corp	Quintiles Transnational Corp.
20080514	Oak Hill Capital Partners III, L.P	Lawrence Ng	ODN Holding Corporation.
20080515	Gordon W. Ommen	VeraSun Energy Corporation	VeraSun Energy Corporation.
20080517	Deutsche Lufthansa AG	JetBlue Airways Corporation	JetBlue Airways Corporation.
20080518	CHS Inc	VeraSun Energy Corporation	VeraSun Energy Corporation.
	Transactions Granted Early Termination—01/07/2008		
20080450	Avista Capital Partners, L.P	Bristol-Myers Squibb Company	Bristol-Myers Squibb Medical Imaging, Inc.; Bristol-Myers Squibb; Radio-pharmaceuticals, Inc.
	Transactions Granted Early Termination—01/08/2008		
20080528	Fillmore Strategic Investors, LLC	Alphome LLC	Alphome LLC.
20080543	Network Appliance, Inc	Onaro, Inc	Onaro, Inc.
	Transactions Granted Early Termination—01/09/2008		
20080492	Avista Capital Partners, L.P	Boston Scientific Corporation	Boston Scientific Corporation.
20080523	Colam Entreprendre S.A	Hagemeyer N.V	Hagemeyer North America.
20080525	American Capital Strategies, Ltd	Audax Private Equity Fund II, L.P	CIBT Global, Inc.
	Transactions Granted Early Termination—01/11/2008		
20080403	EMCORE Corporation	WorldWater & Solar Technologies Corp	WorldWater & Solar Technologies Corp.
20080441	Houchens Industries, Inc. Employee Stock Ownership Plan Trus.	The PNC Financial Services Group, Inc	Hilliard Lyons Capital Management, LLC; Hilliard Lyons Trust Company, LLC; J.J.B. Hilliard, W.L. Lysons, LLC.
20080477	Affiliated Managers Group, Inc	Cooke & Bieler, L.P	Cooke & Bieler, LLP.
20080501	International Business Machines Corporation.	Arsenal Digital Worldwide Solutions, Inc	Arsenal Digital Worldwide Solutions, Inc.
20080520	Blue Harbour Strategic Value Partners Offshore, Ltd.	Domino's Pizza, Inc	Domino's Pizza, Inc.
20080546	ITOCHU Corporation	Tenaska Power Fund, L.P	Commonwealth Chesapeake Company, LLC.
20080547	News Corporation	Newco	Newco.
20080548	Macrovision Corporation	Gemstar-TV Guide International, Inc	Gemstar-TV Guide International, Inc.
20080549	Gemstar-TV Guide International, Inc	Macrovision Corporation	Macrovision Corporation.
20080555	KRG Capital Fund III, L.P	Pegasus International, Inc	Pegasus International, Inc.
20080556	Koninklijke Philips Electronics N.V	Visicu, Inc	Visicu, Inc.
20080557	Camcem, S.A. de C.V	Alliance Concrete, Inc	Alliance Concrete, Inc.
20080562	Tontine Partners, L.P	Tower Tech Holdings, Inc	Tower Tech Holdings, Inc.
20080583	LNK Partners, L.P	ABP Corporation	ABP Corporation.

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. 08–361 Filed 1–28–08; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 7A of the Clayton Act

AGENCY: Federal Trade Commission

ACTION: Notice

SUMMARY: The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act. Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390 (''the Act''), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). The new thresholds, which take effect 30 days after publication in the Federal Register, are as follows:

SUBSECTION OF 7A	ORIGINAL THRESHOLD	ADJUSTED THRESHOLD
7A(a)(2)(A)	$200 million	$252.3 million
7A(a)(2)(B)(i)	$50 million	$63.1 million
7A(a)(2)(B)(i)	$200 million	$252.3 million
7A(a)(2)(B)(ii)(I)	$10 million	$12.6 million
7A(a)(2)(B)(ii)(I)	$100 million	$126.2 million
7A(a)(2)(B)(ii)(II)	$10 million	$12.6 million
7A(a)(2)(B)(ii)(II)	$100 million	$126.2 million
7A(a)(2)(B)(ii)(III)	$100 million	$126.2 million
7A(a)(2)(B)(ii)(III)	$10 million	$12.6 million
Section 7A note: Assessment and Collection of Filing Fees[1] (3)(b)(1)	$100 million	$126.2 million
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	$100 million	$126.2 million
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	$500 million	$630.8 million
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3)	$500 million	$630.8 million

[1] Pub. L. 106-553, Sec. 630(b) amended Sec. 18a note.

Any reference to these thresholds and related thresholds and limitation values in the HSR rules (16 C.F.R. Parts 801-803) and the Antitrust Improvements Act Notification and Report Form and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

ORIGINAL THRESHOLD	ADJUSTED THRESHOLD
$10 million	$12.6 million
$50 million	$63.1 million
$100 million	$126.2 million
$110 million	$138.8 million
$200 million	$252.3 million
$500 million	$630.8 million
$1 billion	$1,261.5 million

EFFECTIVE DATE: February 28, 2008.

FOR FURTHER INFORMATION CONTACT: B. Michael Verne, Bureau of Competition, Premerger Notification Office (202) 326-3100.

Authority: 16 U.S.C. § 7A.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–1486 Filed 1–28–08: 8:45 am]

[BILLING CODE 6750–01–S]

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $25,319,000 for Section 8(a)(1), and $2,531,900 for Section 8(a)(2)(A).

EFFECTIVE DATE: January 29, 2008.

FOR FURTHER INFORMATION CONTACT: James F. Mongoven, Bureau of Competition, Office of Policy and Coordination, (202) 326-2879.

(Authority: 15 U.S.C. § 19(a)(5)).

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–1487 Filed 1–28–08: 8:45 am]

[BILLING CODE 6750–01–S]

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FMR 2008–B4]

Locating Federal Facilities in Rural Areas

AGENCY: General Services Administration.

ACTION: Notice of cancellation of bulletin.

SUMMARY: This bulletin cancels FMR Bulletin 2003–B1, Locating Federal Facilities in Rural Areas. FMR Bulletin 2003–B1 assisted Federal agencies, having their own statutory authority to acquire real property, in complying with the Rural Development Act of 1972. The ''rural area'' definition is outdated and the revised definition was published in 41 CFR 102–83.55, Rural Areas, Real Property Policies Update, on November 2, 2005. FMR Bulletin 2003–B1 is being cancelled in its entirety to ensure that agencies refer to 41 CFR 102–83.55 for the definition of rural areas. There will be no replacement bulletin for cancelled bulletin FMR 2003–B1, Locating Federal Facilities in Rural Areas.

DATES: *Effective Date:* January 29, 2008.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, 202–501–1737 or *stanley.langfeld@gsa.gov*.

Dated: January 10, 2008.

Kevin Messner,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. E8–1518 Filed 1–28–08; 8:45 am]

BILLING CODE 6820–RH–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0279]

Agency Information Collection Request; 30-Day Public Comment Request

Agency: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: Institutional Review Board/Independent Ethics Committee Forms-Extension—OMB No. 0990–0279—Office for Human Research Protections.

Abstract: The Office for Human Research Protections (OHRP) is requesting a three year extension of the Institutional Review Board (IRB) Independent Ethics Committee (IEC) Registration Form designed to provide a simplified procedure for institutions engaged in Department of Health and Human Services (HHS) conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and HHS regulations for the protection of human subjects at 45 CFR 46.103. Respondents are institutions or organizations operating IRBs or IECs designated by an institution under an assurance of compliance approved for federal-wide use by OHRP and that review HHS-conducted or supported research. Data is collected as necessary.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
IRB/IEC–0279	6,000	2	1	12,000

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–1439 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0278]

Agency Information Collection Request; 30-Day Public Comment Request

Agency: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: Federal-wide Assurance Forms-Extension—OMB No. 0990–0278—Office for Human Research Protections.

Abstract: The Office for Human Research Protections (OHRP) is requesting a three year extension of the Federal-wide Assurance (FWA) forms. The FWA forms were designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of section 49(a) of the Public Health Service Act and HHS Regulations for the protection of human subjects at 45 CFR 46.103. The respondents are institutions engaged in human subjects research that is conducted or supported by HHS. Data is collected as needed.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
FWA 0278	10,000	2	45/60	15,000

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–1441 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than

the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12⅛% for the quarter ended December 31, 2007. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 16, 2008.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. 08–370 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy, and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 17th meeting of the American Health Information Community Confidentiality, Privacy, and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: February 5, 2008, from 1 p.m. to 5 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/confidentiality/.*

SUPPLEMENTARY INFORMATION: The Workgroup Members will continue discussing and evaluating the confidentiality, privacy, and security protections and requirements for participants in electronic health information exchange environments.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: January 17, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–363 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Personalized Healthcare Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 12th meeting of the American Health Information Community Personalized Healthcare Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: February 14, 2008, from 1 p.m. to 3 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthcare/.*

SUPPLEMENTARY INFORMATION: The Workgroup will discuss possible common data standards to incorporate interoperable, clinically useful genetic/genomic information and analytical tools into Electronic Health Records (EHRs) to support clinical decision-making for the clinician and consumer.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthcare/phc_instruct.html.*

Dated: January 17, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–364 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 22nd meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: February 15, 2008, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/chroniccare/.*

SUPPLEMENTARY INFORMATION: The workgroup will hear testimony on ways to use information technology to better coordinate care for patients with chronic conditions and will discuss this information in light of opportunities to better facilitate patient care coordination.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/chroniccare/cc_instruct.html*

Dated: January 18, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–365 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice annoucnes the 23rd meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: February 13, 2008, from 1 p.m. to 4 p.m. [Eastern].

ADDRESS: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/consumer/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to encourage the widespread adoption of a personal health record that is easy-to-use, portable, longitudinal, affordable, and consumer-centered.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/consumer/ce_instruct.html.*

Dated: January 18, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–366 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 21st meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: February 12, 2008, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthrecords/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on ways to achieve widespread adoption of certified EHRs, minimizing gaps in adotion among providers.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthrecords/ehr_instruct.html.*

Dated: January 17, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–367 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 15th meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: February 8, 2008, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how health information technology can provide the data needed for the development of quality measures that are useful to patients and others in the health care industry, automate the measurement and reporting of a comprehensive current and future set of quality measures, and accelerate the use of clinical decision support that can improve performance on those quality measures.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/quality/quality_instruct.html.*

Dated: January 17, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–368 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Population Health and Clinical Care Connections Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 23rd meeting of the American Health Information Community Population Health and Clinical Care Connections Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: February 6, 2008, from 1 p.m. to 4 p.m. [Eastern time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION: *http://www.hhs.gov/healthit/ahic/population/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to facilitate the flow of reliable health information among population health and clinical care systems necessary to protect and improve the public's health.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/population/pop_instruct.html.*

Dated: January 17, 2008.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 08–369 Filed 1–28–08; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–08AH]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic

summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Improving the Health and Safety of Minority Workers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

Occupational stress is one of the major causes of diminished health and productivity on the job. The continuing escalation of stress-related medical care utilization and costs, the negative effect of job stress on satisfaction as well as the dysfunctional and costly effects of stress on job performance and employee turnover rate are some of the documented health, psychological and behavioral consequences of stress.

Although racial and ethnic minority groups shoulder a disproportionate burden of death and disability from various stress-related illnesses, few studies have explored factors in the workplace that may contribute to these disparities in health. Because of their general concentration in low status, low paying and/or blue-collar jobs, some racial and ethnic minorities may be over-exposed to workplace factors traditionally linked to a variety of stress-related problems such as a high workload coupled with a lack of control or authority over work. In addition, racial and ethnic minorities are significantly more likely than non-minorities to encounter discrimination and other ethnocultural stressors in the workplace, ranging from assimilation pressures and isolation to inequalities in training and advancement. Ethnocultural stressors have been linked with psychological distress and other problems in physical and mental health.

On the other hand, occupational stress research experts suggest that certain workplace and other factors (e.g., co-worker and supervisory support, anti-discrimination policies and practices, etc.) may reduce stress among employees, including racial and ethnic minorities.

This research will focus on: (1)Assessing the degree to which minorities are exposed to traditionally-studied and ethnocultural stressors, (2) identifying the stressors that are most predictive of stress-related problems (e.g., symptoms of psychological distress, health-impairing behaviors) in racial and ethnic minorities, (3) identifying organizational and other factors that afford minorities protection against the development of stress-related problems and (4) developing an occupational stress toolkit (i.e. consisting of information and other resources) that will better enable employers and community-based organizations to prevent and manage occupational stress in diverse workplaces and communities.

This research will be conducted in three phases. In phase one, a 30-minute survey will be administered by telephone to 2300 Blacks/African Americans, White/European Americans, Hispanic/Latino Americans, American Indian/Alaska Natives, and Asian Americans. Additionally, a 90-minute qualitative interview will be administered face-to-face to 160 Blacks/African Americans, Hispanic/Latino Americans, American Indian/Alaska Natives, and Asian Americans recruited through community-based organizations. All telephone survey and qualitative interview respondents will be between the ages of 18 and 65, U.S. born and/or reared, either currently employed or unemployed for no more than 1 year, and living in the Chicago area. In phase two of this research, a 15-minute web-based, key informant survey will be administered to 60 employers (via Human Resource Representatives) and 60 community-based organizations (via Executive Directors) in the Chicago area. The web-based survey is designed to assess the informational needs of these organizations as they relate to addressing occupational stress in racially and ethnically diverse workforces or communities. NIOSH will combine the results of this needs assessment with phase one telephone survey and qualitative interview findings to develop and disseminate an occupational stress toolkit.

In phase three of this research, a second web-based key informant survey will be administered to the same 60 employers and 60 community-based organizations six months after the occupational stress toolkit has been disseminated to them for review and use. The survey will evaluate perceptions of the toolkits' utility and how well it met the organizations' needs. Also, the survey will elicit suggestions for its improvement.

Findings will be used to improve the toolkit and to help identify potential future intervention efforts to reduce occupational stress in racially and ethnically diverse workforces and communities. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Phase I Workers Telephone Interviews	2300	1	30/60	1150
Phase I Workers Qualitative Face-to-Face Interviews	160	1	1.5	240
Phase II Employers and CBO's Web Based Interviews	120	1	15/60	30
Phase III Follow-up Employers and CBO's Web Based Interviews	120	1	15/60	30
Total				1450

Dated: January 18, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–1453 Filed 1–28–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–08AJ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–693–5960 or send comments to CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Focus Group Testing To Effectively Plan and Tailor Cancer Prevention and Control Communication Campaigns—New—Division of Cancer Prevention and Control (DCPC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the CDC's Division of Cancer Prevention and Control (DCPC) is to reduce the burden of cancer in the United States through cancer prevention, reduction of risk, early detection, better treatment, and improved quality of life for cancer survivors. Toward this end, the DCPC supports the scientific development, implementation, and evaluation of various health communication campaigns with an emphasis on specific cancer burdens. This process requires testing of messages, concepts, and materials prior to their final development and dissemination, as described in the second step of the health communication process, a scientific model developed by the U.S. Department of Health and Human Services' National Cancer Institute to guide sound campaign development.

The communication literature supports various data collection methods to conduct credible formative, concept, message, and materials testing, one of which is focus groups. The purpose of focus groups is to ensure that the public and other key audiences, like health professionals, clearly understand cancer-specific information and concepts, are motivated to take the desired action, and do not react negatively to the messages.

The proposed information collection will involve focus groups to assess numerous qualitative dimensions of cancer prevention and control messages, including, but not limited to, knowledge, attitudes, beliefs, behavioral intentions, information needs and sources, and compliance to recommended screening intervals. Insights gained from the focus groups will assist in the development and/or refinement of future campaign messages and materials. Respondents will include health care providers as well as members of the general public. Because communication campaigns will vary according to the type of cancer, the qualitative dimensions of the message described above, and the type of respondents, DCPC has developed a library of questions that can be tailored for use by a variety of types of focus groups. A generic clearance of the repository of questions is requested. The discussion guide for each focus group will be drawn from the list of pre-approved questions.

The average burden for each focus group discussion will be two hours. DCPC will conduct or sponsor up to 66 focus groups per year over a three-year period. An average of 12 respondents will participate in each focus group discussion.

There are no costs to respondents except their time. The total estimated annualized burden hours are 1,663.

Estimated Annualized Burden Hours:

Type of respondents and form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Health care providers and general public:				
Screening Form	1,584	1	3/60	79
Focus Group Discussion Guide	792	1	2	1,584
Total				1,663

Dated: January 18, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–1456 Filed 1–28–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

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:

Time and Date: 8 a.m.–6 p.m., February 27, 2008; 8 a.m.–5 p.m., February 28, 2008.

Place: Centers for Disease Control and Prevention, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent ''Oz''

Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C.1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on Influenza Vaccines; Meningococcal Conjugate Vaccine; Rabies Vaccine and Biologicals; Human Papillomavirus Vaccines; Anthrax Vaccine; Rotavirus Vaccines; Use of Vaccines during Pregnancy & Breastfeeding; Update on Vaccine Supply; General Recommendations; Japanese Encephalitis Vaccines; Immunization Safety Update; Combination Vaccines; Update on Implementation of Approach to Economic Analyses and agency updates. There may be VFC voting on the Influenza and Meningococcal Vaccines.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Antonette Hill, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, Georgia 30333, Telephone (404) 639–8836, Fax (404) 639–8905.

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: January 18, 2008.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–1457 Filed 1–28–08; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH)

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., February 19, 2008 (Closed); 8 a.m.–5 p.m., February 20, 2008 (Closed)

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, California 94102, Telephone (415) 392–7755, Fax (415) 391–8719.

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) Public Law 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: January 19, 2008.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–1458 Filed 1–28–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have delegated to the Director, Office of Refugee Resettlement, with the authority to further re-delegate, the following authority delegated to the Assistant Secretary for Children and Families by the Secretary of the Department of Health and Human Services on April 30, 2004.

(a) *Authority Delegated.*

Authority to conduct public awareness and information activities under the Trafficking Victims Protection Act of 2000 (TVPA), Public Law 106–386, section 106(b), 22 U.S.C. 7104(b).

(b) *Limitations and Conditions.*

1. This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families' authorities.

3. The Director of the Anti-Trafficking in Persons Division must report to the Director, Office of Refugee Resettlement, and the Director, Office of Refugee Resettlement, must report to the Assistant Secretary prior to carrying out public awareness and information activities.

(c) *Effective Date.*

This delegation is effective upon date of signature.

(d) *Effect on Existing Delegations.*

None.

In addition, I have affirmed and ratified any actions taken by the Director, Office of Refugee Resettlement, which involved the exercise of this authority prior to the effective date of this delegation.

Dated: January 11, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E8–1479 Filed 1–28–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

Notice is hereby given that I have delegated to the Director of the Anti-Trafficking in Persons Division, the following authority vested in the Director of the Office of Refugee Resettlement under the Trafficking Victims Protection Act of 2000, Public Law No. 106–386, 114 Stat. 1464 (2000).

(a) *Authority Delegated.*

Authority to conduct certification activities under the Trafficking Victims Protection Act of 2000, Public Law No. 106–386, 107(b)(1), 114 Stat. 1464, 1475 (2000). In exercising this authority, personnel in the Office of Refugee Resettlement will consult with the Attorney General.

(b) *Limitations and Conditions.*

1. This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families' authorities.

3. This authority may not be re-delegated.

(c) Effective Date.

This delegation of authority is effective upon the date of signature.

(d) *Effect on Existing Delegations.*

None.

In addition, I hereby affirm and ratify any actions taken by the Director, Anti-Trafficking in Persons Division, which, in effect, involved the exercise of these authorities prior to the effective date of this delegation.

Dated: January 23, 2008.

Brent Orrell,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 08–355 Filed 1–28–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), as follows: Chapter KR, Office of Refugee Resettlement, as last amended in 68 FR 11566–67, 03/11/03. This notice adds a new division, the Anti-Trafficking in Persons Division, to the Office of Refugee Resettlement. The changes are as follows:

I. Chapter KR. Office of Refugee Resettlement

A. Delete KR.10 Organization in its entirety and replace with the following:

KR.10 Organization. The Office of Refugee Resettlement (ORR) is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KRA).
Division of Refugee Assistance (KRE).
Division of Community Resettlement (KRF).
Division of Budget, Policy and Data Analysis (KRG).
Division of Unaccompanied Children's Services (KRH).
Anti-Trafficking in Persons Division (KRI).

B. Delete KR.20 Functions, Paragraph A, in its entirety and replace with the following:

A. The Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out ORR's mission and providing guidance and general supervision to the components of ORR. The Office provides direction in the development of program policy and budget and in the formulation of salaries and expense budgets. Staff also provide administrative and personnel support services. The Office is responsible for implementing certain provisions of the Trafficking Victims Protection Act.

The Office coordinates with the lead refugee and entrant program offices of other Federal departments; provides leadership in representing refugee and entrant programs, policies and administration to a variety of governmental entities and other public and private interests; and acts as the coordinator of the total refugee and entrant resettlement effort for ACF and the Department. In consultation with appropriate juvenile justice professionals and Federal immigration services and border security agencies, the Director makes placement determinations and coordinates care and placement services for unaccompanied alien children who are in Federal custody by reason of their immigration status.

C. Establish KR.20 Functions, Paragraph F, Anti-Trafficking in Persons Division:

F. The Anti-Trafficking in Persons Division (ATIP) is responsible for implementing certain provisions of the Trafficking Victims Protection Act. The Division coordinates the certification of, and services to, victims of severe forms of trafficking. It also coordinates with other Federal Government agencies on certification activities and policy issues related to the trafficking law. The Division certifies victims of severe forms of trafficking following consultation with appropriate Federal Government agencies and social service-providing agencies. The Division coordinates with the Division of Unaccompanied Children's Services and the Division of Refugee Assistance for efficient and appropriate determination and placement of identified unaccompanied minor victims of trafficking, utilizing the foster care system in place for unaccompanied refugee children. The Division also maintains statistical information and data on each victim, including certification documentation and services provided. The Division compiles annual information to be submitted to Congress, in coordination with other Federal agencies, on the number of certifications conducted and services accessed by identified victims.

Dated: January 11, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E8–1466 Filed 1–28–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

Notice is hereby given that I have delegated to the Director of the Anti-Trafficking in Persons Division the following authority vested in the Director of the Office of Refugee Resettlement.

(a) *Authority Delegated.*

Authority to conduct public awareness and information activities under the Trafficking Victims Protection Act of 2000 (TVPA), Public Law No. 106–386, § 106(b), 22 U.S.C. 7104(b).

(b) *Limitations and Conditions.*

1. This Delegation shall be exercised under the Department's existing delegation of authority and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families' authorities.

3. The Director of the Anti-Trafficking in Persons Division must report to the Director, Office of Refugee Resettlement, and the Director, Office of Refugee Resettlement, must report to the Assistant Secretary prior to carrying out public awareness and information activities.

(c) *Effective Date.*

This delegation of authority is effective upon the date of signature.

(d) *Effect on Existing Delegations.*

None.

In addition, I have affirmed and ratified any actions taken by the Director, Anti-Trafficking in Persons Division which involved the exercise of this authority prior to the effective date of this delegation.

Dated: January 15, 2008.

Brent Orrell,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E8–1517 Filed 1–28–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Project: Community Mental Health Services Block Grant Application Guidance and Instruction, FY 2009–2011 (OMB No. 0930–0168)—Revision

Sections 1911 through 1920 of the Public Health Services Act (42 U.S.C. 300x through 300x-9) provide for annual allotments to assist States to establish or expand an organized, community-based system of care for adults with serious mental illnesses and children with serious emotional disturbances. Under these provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary of the Department of Health and Human Services.

For the FY 2009–2011 Community Mental Health Services Block Grant application cycle, SAMHSA will provide States guidance and instructions to guide development of comprehensive State applications/plans and implementation reports. In order to develop this guidance, SAMHSA convened a working group of State representatives to provide input and suggestions regarding the organization and content of the guidance. To the extent possible, these suggestions were incorporated into proposed revisions for the 2009–2011 application cycle. These proposed revisions to the guidance include:

(1) Streamlining the process for reporting States' use of the block grant to support mental health transformation. Revisions to the FY2008 guidance required a new request for information regarding funding for mental health transformation. A number of States indicated that their fiscal processes did not permit reporting in the manner requested. Other States suggested that the reporting burden was significantly increased while the information provided did not accurately reflect the range of transformation activities they were engaged in.

This issue was the principal focus of the State working group, and the proposed FY2009–2011 guidance makes significant revisions based on the input of the group. The revisions include narrowing from 20 to six (6) the number of transformation categories for which States are asked to provide the amount of block grant funding used to support specific activities in FY2009. The new Table C which States are requested to complete follows:

	Column 1	Column 2	
	Is MHBG funding used to support this goal? If yes, please check.	If yes, please provide the actual or estimated amount of MHBG funding that will be used to support this transformation goal in FY2009.	
		Actual	Estimated
GOAL 1: Americans Understand that Mental Health Is Essential to Overall Health			
GOAL 2: Mental Health Care is Consumer and Family Driven			
GOAL 3: Disparities in Mental Health Services are Eliminated			
GOAL 4: Early Mental Health Screening, Assessment, and Referral to Services are Common Practice			
GOAL 5: Excellent Mental Health Care Is Delivered and Research Is Accelerated			

	Column 1	Column 2	
	Is MHBG funding used to support this goal? If yes, please check.	If yes, please provide the actual or estimated amount of MHBG funding that will be used to support this transformation goal in FY2009.	
		Actual	Estimated
GOAL 6: Technology Is Used to Access Mental Health Care and Information			
Total MHBG Funds	N/A		

In addition to revising the transformation data table, the guidance makes additional changes, including: (a) Eliminating the requirement that transformation activities be tracked within the context of the five (5) block grant statutory criteria; (b) consolidating requests for narrative regarding transformation activities into a single section; and (c) eliminating redundancy by allowing States to refer to other sections that include similar material. In collaboration with the State working group, SAMHSA identified and eliminated requests for data regarding transformation activities that are collected through other State funding sources.

With these revisions, SAMHSA has simplified the reporting process for States while still ensuring that it receives data and information necessary to understand and monitor the role of the block grant in supporting State mental health transformation efforts.

(2) Reorganizing and consolidating sections of the guidance to improve readability and clarity and to reduce redundancy. For example, instructions regarding the general format of the application now are found in one section of the guidance. In addition, specific provisions in sections requiring applications to track the five (5) statutory criteria and in sections regarding reporting performance indicators in the State Implementation Report were reorganized to improve the logical flow of the application. In addition, the guidance clarifies that States may refer to other sections of the application where appropriate, rather than repeating identical information in multiple sections of the application. All sections of the guidance were edited for clarity.

(3) Eliminating Table 18 from the Uniform Reporting System (URS) tables that States must submit. The URS is a set of standardized tables designed to track individuals State performance over time and to aggregate State information to develop a national picture of State public mental health systems. Table 18 was intended to produce a profile of adults with schizophrenia receiving new generation medications during the year. A review of all URS tables determined that the data reported on table 18 is not comparable across States and has limited usefulness to CMHS or States in planning and improving mental health systems. In addition, Table 18 was reported to have the lowest amount of utility but the greatest reporting burden for States.

(4) Eliminating the requirement that States complete a State-Level Reporting Capacity Checklist for submission to the State Data Infrastructure Coordinating Center.

This MHBG Guidance has been developed based on current statute. The agency is aware that Congress is currently considering legislation to reauthorize SAMHSA. The reauthorization bill proposes substantive changes to the MHBG that would affect this Guidance. Upon passage of reauthorization legislation, the Center for Mental Health Services (CMHS) will contact States to provide additional guidance that may be needed to complete the MHBG application and Implementation Report. If significant changes to MHBG requirements, State plans, or data collection are included in the final reauthorization law, CMHS may revise and re-submit this guidance for public comment through the **Federal Register**.

SAMHSA is requesting approval of this guidance for FY 2009, 2010, and 2011. The 2007–2011 SAMHSA Data Strategy has just been released to the public. Goal #2 of the Data Strategy specifically deals with performance data and includes specific milestones for the next few years, including the development of client level outcome measures for the states by 2011. CMHS may revise and re-submit this guidance to reflect the adoption of client level measures for future block grant applications if sufficient progress is made over the next 3 years.

The following table summarizes the annual burden for the revised application.

Application	Number of respondents	Responses/ respondent	Burden response (hrs)	Total burden hours
Plan:				
1 year	44	1	180	7,920
2 year	6	1	150	900
3 year	9	1	110	900
Implementation Report	59	1	75	4,425
URS Tables	59	1	40	2,360
Total	59			16,595

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: January 22, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–1484 Filed 1–28–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0173]

Area Maritime Security Committee, South Texas; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: The Coast Guard seeks applications for membership in the Area Maritime Security Committee, South Texas. The Committee assists the Captain of the Port, Corpus Christi, in developing, renewing, and updating the Area Maritime Security plan for their area of responsibility.

DATES: Requests for membership should reach the Captain of the Port, Corpus Christi, on or before February 1, 2008.

ADDRESSES: Submit applications for membership to the Captain of the Port, Corpus Christi, Commander, USCG Sector Corpus Christi, 8930 Ocean Drive, Hangar 41. Corpus Christi, Texas 78419.

FOR FURTHER INFORMATION CONTACT: Mr. John Zarbock at 361–888–3162 (X501).

SUPPLEMENTARY INFORMATION:

The Committee

The Area Maritime Security Committee, South Texas (The Committee) is established under, and governed by 33 CFR part 103, subpart C. The functions of the committee include, but are not limited to, the following:

(1) Identifying critical port infrastructure and operations

(2) Identifying risks (i.e., threats, vulnerabilities and consequences).

(3) Determining strategies and implementation methods for mitigation.

(4) Developing and describing the process for continuously evaluating overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied.

(5) Advising and assisting the Captain of the Port in developing, reviewing, and updating the Area Maritime Security Plan under 33 CFR part 103, subpart E.

Positions Available on the Committee

There are three vacancies on the Committee. Members may be selected from

(1) The Federal, Territorial, or Tribal government;

(2) The State government and political subdivisions of the State;

(3) Local public safety, crisis management, and emergency response agencies;

(4) Law enforcement and security organizations;

(5) Maritime industry, including labor;

(6) Other port stakeholders having a special competence in maritime security; and

(7) Port stakeholders affected by security practices and policies.

In support of the Coast Guard's policy on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Qualification of Members

Members must have at least 5 years of experience related to maritime or port security operations. Applicants may be required to pass an appropriate security background check before appointment to the Committee.

The terms of office for each vacancy is 5 years. However, a member may serve one additional term of office. Members are not salaried or otherwise compensated for their service on the Committee.

Format for Applications

Applications for membership may be in any format. However, because members must demonstrate an interest in the security of the area covered by the Committee, we particularly encourage the submission of information highlighting experience in maritime security matters.

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) (The Act) authorizes the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Committees for any port area of the United States. See 33 U.S.C. 1226; 46 U.S.C.; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The Act exempts Area Maritime Security Committees from the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub L. 92–463)

Dated: January 7, 2008.

P. S. Simons,

Captain U. S. Coast Guard, Acting Captain of the Port, Corpus Christi.

[FR Doc. E8–1473 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0055, formerly CGD08–07–029]

Lower Mississippi River Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications; extension of application deadline.

SUMMARY: The Coast Guard extends the deadline for applications for membership in the Lower Mississippi River Safety Advisory Committee. This Committee advises and makes recommendations to the Coast Guard on matters relating to navigation safety on the Lower Mississippi River.

DATES: Application forms should reach us on or before February 28, 2008.

ADDRESSES: You may request an application form by writing U.S. Coast Guard, Sector New Orleans, Attn: Waterways Management, 1615 Poydras Street, New Orleans, LA 70112–2711 or by calling 504–565–5108. Send your application in written form to the above street address. A copy of this notice and the application form are available in our online docket, CGD08–07–029, at *http://frwebgate.access.gpo.gov/cgi–bin/leaving.cgi?from=leaving FR.html&log=linklog&to=http://regulations.gov*.

FOR FURTHER INFORMATION CONTACT: LTJG Tonya Harrington, Assistant to Executive Director of Lower Mississippi River Waterway Safety Advisory Committee at 504–565–5108.

SUPPLEMENTARY INFORMATION: On October 30, 2007, we published a request in the **Federal Register** (72 FR 61362) for applications for membership in the Lower Mississippi River Safety Advisory Committee. The deadline for applications announced in that notice is being extended until February 28, 2008. If you applied in response to the initial notice, you do not need to send another application form.

The Lower Mississippi River Waterway Safety Advisory Committee is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). This

committee provides local expertise on communication, surveillance, traffic control, anchorages, aids to navigation and other topics relating to navigational safety on the Lower Mississippi River to the Coast Guard.

The Committee meets at least four times a year in the New Orleans area. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for twenty-four positions that expire or become vacant on May 30, 2008. To be eligible you should have expertise in navigation safety, waterways management, vessel traffic service and management, shipboard operations or facility operations.

Each member serves for a term of 2 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or any other compensation from the Federal Government.

Vacancies to be filled are for:

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the Head of Passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessel owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations that operate harbor tugs or barge fleets in the geographical area covered by the Committee.

(4) Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee.

(7) Three members representing consumers, shippers, or importers/exporters that utilize vessels that operate on the navigable waterways covered by the Committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on vessels which utilize the navigable waterways covered by the Committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: January 9, 2007.

J.H. Horn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. E8–1564 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0008]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet in Galveston, Texas to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Tuesday, February 26, 2008 from 9 a.m. to 12 p.m. The meeting of the Committee's working groups will be held on Tuesday, February 12, 2008 from 9 a.m. to 12 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. Requests to have a copy of your materials distributed to each member of the committee or working group should reach the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee will meet at Marine Safety Unit Galveston, 2101 FM 2004, Texas City, Texas 77591, (409)–978–2700. The working groups meeting will be held at the Houston Pilots Association, 8150 South Loop East, Houston, Texas 77011–1747, (713)–645–9620. Send written material and requests to make oral presentations to LT Sean Hughes, Assistant to the Executive Secretary of HOGANSAC, 9640 Clinton Drive, Houston, Texas 77029. This notice is available in our online docket, USCG–2008–0008, *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Hal R. Pitts, Executive Secretary of HOGANSAC, telephone (713) 671–5164, e-mail *hal.r.pitts@uscg.mil* or Lieutenant Sean Hughes, Assistant to the Executive Secretary of HOGANSAC, telephone (713) 678–9001, e-mail *sean.p.hughes@uscg.mil.* Written materials and requests to make presentations should be sent to Commanding Officer, Sector Houston/Galveston, Attn: LT Hughes.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Whitehead) or the Committee Sponsor's representative, Executive Director (CAPT Diehl) and Chairperson (Ms. Tava Foret).

(2) Approval of the 13 September, 2007 and 27 November, 2007 minutes.

(3) Old Business:

(a) Navigation Operations (NAVOPS)/Maritime Incident Review subcommittee report;

(b) Deep Draft Entry Facilitation (DDEF) subcommittee report;

(c) Dredging subcommittee report;

(d) Technology subcommittee report;

(e) Area Maritime Security Committee (AMSC) Liaison's report;

(f) Harbor of Safe Refuge subcommittee report;

(g) HOGANSAC Outreach report;

(h) Maritime Awareness subcommittee report.

(4) New Business:

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future;

(2) Review and discuss the work completed by each working group;

(3) Put forth any action items for consideration at full committee meeting.

Procedural

Working groups have been formed to examine the following issues: Dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, facilitating deep draft movements, mooring infrastructure, and safe refuge during hurricanes. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility.

All meetings are open to the public. Please note that meetings may close early if all business is finished. At the chairs discretion members of the public may make oral presentations during the meetings. Requests to make oral presentations should reach the Coast Guard five (5) working days before the meeting at which the presentation will be made. Written material for distribution at a meeting should reach the Coast Guard no later than ten (10) working days before the meeting at which the presentation will be made. If you would like a copy of your material distributed to each member of the committee in advance of the meetings, please submit your request along with nineteen (19) copies of the materials to the Coast Guard at least ten (10) working days before the meeting at which the presentation will be made.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Secretary or Assistant to the Executive Secretary as soon as possible.

Dated: January 14, 2008.

J.H.Korn,

Captain. U.S. Coast Guard Commander, 8th Coast Guard District, Acting.

[FR Doc. E8–1472 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Advance Notice of Availability of Security Improvement Grants and Application Process

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of availability.

SUMMARY: DHS is announcing that it will issue guidance and accept applications for surface transportation security improvement grants and that applicants must submit the applications pursuant to procedures to be made available on or about February 1, 2008.

FOR FURTHER INFORMATION CONTACT: E-mail: *TSAgrants@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

New and Extended Programs

On or about February 1, 2008, DHS will announce a new grant program for the freight rail industry and extensions of, and possible changes to, two existing surface transportation grant programs: Trucking (Trucking Security Program or TSP) and Intercity Bus (Intercity Bus Security Grant Program or IBSGP). By this notice, DHS is encouraging entities owning, operating, or having interest in systems in these transportation sectors to review the forthcoming guidance and, as appropriate, apply for grants under the programs.

DHS will soon be initiating a new grant program called the Freight Rail Security Grant Program (FRSGP). It is a component of the Transit Security Grant Program (TSGP), which is a part of DHS's FY 2008 Infrastructure Protection Program (IPP). The FRSGP was created as a result of the ''Implementing Recommendations of the 9/11 Commission Act of 2007'' (9/11 Commission Act), Public Law 110–53. Sec. 1513 of the 9/11 Commission Act directs DHS to make funds for security improvement grants available to certain entities involved in or with the freight railroad industry and specifies the uses to which the funds may be applied.

At the same time that DHS announces grant guidance, DHS will announce extensions of the existing TSP and the IBSGP. Currently, TSP funds are used to service an anti-terrorism and security awareness program for professionals and operating entities within the highway sector to include: (1) Participant identification and recruitment; (2) training; (3) communications; and (4) information analysis and distribution. Per The Joint Explanatory Statement accompanying HR 2764 the FY 2008 Consolidated Appropriations Act, the FY 2008 program must be a competitive program and open to any entity that can demonstrate the financial and resource capabilities to service the program within the highway sector. The IBSGP awards funds to expand security for bus services to fixed route over-the-road buses and charter bus operations with a minimum of 50 trips into an Urban Area Security Initiative (UASI) jurisdiction. An UASI jurisdiction is defined in the Homeland Security Grant Program (HSGP) FY 2008 Program Guidelines and Application Kit.

General Information

In grant guidance to be released on or about February 1, 2008, DHS will identify the categories of freight rail, trucking, and intercity bus entities that are eligible for funding under the programs and the uses to which funding may be applied. With respect to the TSP and IBSGP, eligibility will not necessarily be limited to entities that have been eligible for funding under previous DHS grant programs.

To apply for grant funding under the FRSGP, TSP, or IBSGP, each eligible applicant must first register as a grant applicant with the Federal government at *http://www.grants.gov.* Several additional steps are required to complete this registration, including registering with the Central Contractor Registration (*http://www.ccr.gov*) and obtaining a Dun & Bradstreet (DUNS) number. Please visit www.grants.gov for more detailed information about this registration process. Please be advised that the entire process can take several weeks. DHS will also post additional information about registration when we issue the grant guidance on or about February 1, 2008. After that date, you may obtain an electronic copy of the grant guidance at *http://www.tsa.gov/grants.*

Issued in Arlington, Virginia, on January 24, 2008.

John Sammon,

Assistant Administrator, Transportation Sector Network Management.

[FR Doc. E8–1548 Filed 1–28–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Louisville, KY; Ashtabula, OH; Everett, WA; Lorain, OH; Sault St. Marie, MI; Port Everglades, FL; Nashville, TN; Oswego, NY; LaPlata, MD; and Portland, ME

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the

Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Louisville, KY; Ashtabula, OH; Everett, WA; Lorain, OH; Sault St. Marie, MI; Port Everglades, FL; Nashville, TN; Oswego, NY; LaPlata, MD; and Portland, ME.

DATES: TWIC enrollment begins in Louisville, Ashtabula, and Everett on February 6, 2008; Port Everglades, Nashville, and Oswego on February 8, 2008; LaPlata and Portland, on February 13, 2008; Lorain on February 20, 2008; and Sault St. Marie on February 21, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov*.

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of Louisville, KY; Ashtabula, OH; and Everett, WA on February 6, 2008; Port Everglades, FL; Nashville, TN; and Oswego, NY on February 8, 2008; LaPlata, MD and Portland, ME on February 13, 2008; Lorain, OH on February 20, 2008; and Sault St. Marie, MI on February 21, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Ohio Valley, including those in the Ports of Louisville and Nashville; Captain of the Port Zone Buffalo, including those in the Ports of Ashtabula and Oswego; Captain of the Port Zone Puget Sound, including those in the Port of Everett; Captain of the Port Zone Detroit, including those in the Port of Lorain; Captain of the Port Zone Sault St. Marie, including those in the Port of Sault St. Marie; Captain of the Port Zone Miami, including those in the Port of Port Everglades; Captain of the Port Zone Baltimore, including those in the Port of LaPlata; and Captain of the Port Zone Northern New England, including those in the Port of Portland must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic*.

Issued in Arlington, Virginia, on January 24, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8–1541 Filed 1–28–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Candidate Conservation Agreement with Assurances and Application for an Enhancement of Survival Permit for the Page Springsnail in Yavapai County, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: The Arizona Game and Fish Department (Applicant), has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit (TE–174351–0) pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act), as amended. The requested permit, which is for a period of 5 years, would authorize incidental take of the Page springsnail, *Pyrgulopsis morrisoni,* in the event it is listed, as a result of conservation actions, on-going fish hatchery operations, and the issuance of certificates of inclusion to other landowners. We invite public comment.

DATES: To ensure consideration, written comments must be received on or before February 28, 2008.

ADDRESSES: Persons wishing to review the application, draft Candidate Conservation Agreement with Assurances (CCAA), or other related documents may obtain a copy by written or telephone request to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Rd. Ste. 103, Phoenix, Arizona 85021 (602/242–0210). Electronic copies of these documents will also be available for review on the Arizona Ecological Services Field Office Web site, *http://www.fws.gov/southwest/es/arizona/*. The application and documents related to application will be available for public inspection, by appointment only, during normal business hours (7:30 a.m. to 3:30 p.m.) at the Arizona Ecological Services Office. Comments concerning the application, draft CCAA, or other related documents should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Rd. Ste. 103, Phoenix, Arizona 85021. Please refer to permit number TE–174351–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mike Martinez at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Rd. Ste. 103, (602/242–0210 ext. 224), or by e-mail at *mike_martinez@fws.gov*.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

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.

The Applicant plans to implement improvements that are expected to enhance and maintain Page springsnail habitat, create additional habitat, reestablish populations of the species, and enroll private lands of willing landowners under certificates of inclusion to conduct similar measures, in Yavapai, Arizona. If conservation actions identified in the CCAA were implemented across the entire range of the species, we expect the need to list the Page springsnail would be ameliorated.

The draft CCAA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969, based upon completion of a checklist.

Section 9 of the Act prohibits the ''taking'' of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531, *et seq.*) and its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C. 4371, *et seq.*) and its implementing regulations (40 CFR 1506.6).

Christopher Jones,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E8–1485 Filed 1–28–08; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0010; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by February 28, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: Ecosystems West Consulting Group, Santa Cruz, CA, PRT–171719

The applicant requests a permit to export seeds from Yadon's piperia (*Piperia yadonii*) to the Kings Park and Botanic Garden, Australia for the purpose of scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: Duke Lemur Center, Durham, NC, PRT–170587

The applicant requests a permit to export tissue samples from cadavers of captive-bred Aye-aye (*Daubentonia madagascariensis*), Crowned lemur (*Eulemar coronatus*), Brown lemur

Dated: January 11, 2008.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–1490 Filed 1–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0011; 96300–1671–0000–P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
164385	Steve W. Blankenship	72 FR 65351; Nov. 20, 2008	Jan. 3, 2008.
139825	John W. Muncy	72 FR 29542; May 29, 2007	Dec. 27, 2007.
153571	James C. Lindsay, Jr.	72 FR 50693; Sept. 4, 2007	Dec. 7, 2007.
154893	Thomas J. Mason	72 FR 37795; July 11, 2007	Dec. 7, 2007.
158124	Lynn H. Stinson	72 FR 50693; Sept. 4, 2007	Dec. 27, 2007.
158704	Patrick T. Beane	72 FR 41516; July 30, 2007	July 30, 2007.
162183	Richard Bodkin	72 FR 52905; Aug. 7, 2007	Dec. 27, 2007.
162184	William Katen	72 FR 52905; Sept. 17, 2007	Dec. 18, 2007.

(*Eulemur fulvus albifrons*), Mongoose lemur (*Eulemur mongoz*), Black lemur (*Eulemur macaco flavifrons*), Ring-tailed lemur (*Lemur catta*), Red-ruffed lemur (*Varecia variegata rubera*), and Black & white ruffed lemur (*Varecia variegata variegata*); and re-export tissue sample from cadaver of wild caught Verreaux's sifaka (*Propithecus verreauxi*) to the University of Adelaide Department of Anatomical Sciences for the purpose of enhancement of the survival of the species through scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Zoological Society of San Diego/San Diego Zoo's Wild Animal Park, Escondido, CA, PRT–170588

The applicant requests a permit to export two captive-hatched Andean condors (*Vultur gryphus*) to the CORPOBOYACA, Boyaca, Columbia, for reintroduction into the wild to enhance the survival of the species.

Applicant: National Zoological Park, Washington, DC, PRT–172290

The applicant requests a permit to import 10 live cheetahs (*Acinonyx jubatus*) from the Cheetah Conservation Fund, Otjiwarongo, Namibia for the purpose of enhancement of the survival of the species.

Applicant: The White Oak Conservation Center, Yulee, FL, PRT–172374

The applicant requests a permit to import 4 live cheetahs (*Acinonyx jubatus*) from the Cheetah Conservation Fund, Otjiwarongo, Namibia for the purpose of enhancement of the survival of the species.

Applicant: Benjamin H. Leforce, Pond Creek, OK, PRT–170351

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Scott J. Poole, Raleigh, NC, PRT–166590

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert A. Dobson, III, Greenville, SC, PRT–171427

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kenneth B. Bishop, Victoria, TX, PRT–171618

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James L. Holzhauer, Columbus, MS, PRT–172526

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Drew Castleberry, Denizon, TX, PRT–172527

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Charles F. Elzer III, Brandenton, FL, PRT–168884

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: January 11, 2008.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–1491 Filed 1–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of request for comments.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on a renewal of an information collection, Verification of Indian Preference for Employment in the BIA and the Indian Health Service (IHS), as required by the Paperwork Reduction Act. The BIA is now seeking comments from interested parties to renew the clearance.

DATES: Submit comments on or before March 31, 2008.

ADDRESSES: Written comments can be sent to Daisy West, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Elizabeth Colliflower, Tribal Relations Specialist, Division of Tribal Government Services, (202) 513–7627.

SUPPLEMENTARY INFORMATION: The purpose of the Indian Preference Form is to encourage qualified Indians to seek preference in employment with the BIA and the IHS. BIA collects information under the proposed regulations to ensure compliance with Indian preference hiring requirements.

Request for Comments

The Department of the Interior invites comments on:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OM clearance number. For example, this collection is listed by OMB as Control No. 1076–0160, and it expires October 5, 2008. The response is voluntary to obtain or retain a benefit.

Please submit your comments to the person listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, are open for public review during the hours of 8 a.m. to 3 p.m., EST, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Information Collection Abstract

The information collection relates only to individuals applying for employment with the BIA and the IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant.

OMB control number: 1076–0160.

Type of review: Renewal.

Brief description of collection: The information will be used to establish that certain persons who are of Indian descent receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA to a Bureau or office within the Department of the Interior or the Department of Health and Human Services and that continues to perform the functions formerly performed as part of the BIA and IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska Native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States. The information is submitted in order to retain a benefit, namely, preference in employment with the BIA and IHS.

Affected entities: Qualified Indian applicants and the tribe's involvement in verifying membership information submitted by the applicant.

Estimated number of respondents: 5,000.

Estimated time per response: 30 minutes.

Number of annual responses: 5,000.

Total annual burden hours: 2,500 hours.

Dated: January 22, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–1478 Filed 1–28–08; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–08–24–1A–PP]

Extension of Approved Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act, OMB Control Number 1004–0196

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On September 18, 2007, the BLM published a notice in the **Federal Register** (72 FR 53261) requesting comments on the collection. The comment period closed on November 19, 2007. The BLM received no comments. You may obtain copies of the proposed collection of information and related explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

DATES: OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, please send your comments and suggestions on the requirements to the BLM at the address below on or before February 28, 2008.

ADDRESSES: You may send comments to the Office of Management and Budget, Interior Department Desk Officer (1004–0196), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *oira_docket@omb.eop.gov*. Please provide a copy of your comments to the BLM Information Collection Clearance Officer (WO–630), Bureau of Land Management via Internet and include your name, address, and ATTN: 1004–0196 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Division of Fluid Minerals, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to leave message or question with the above individual. For questions regarding the information collection process, you may contact Alexandra Ritchie, Bureau Information Collection Clearance Officer (WO–630) by phone on (202) 452–0388, fax (202) 653–5287, or e-mail at *Alexandra_Ritchie@blm.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1004–0196.

Title: Oil and Gas Leasing: National Petroleum Reserve, Alaska (43 CFR subparts 3130, 3133, 3135, 3137, and 3138).

BLM Form Numbers: None.

Type of Request: Extension of currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion; nonrecurring.

Estimated Total Annual Respondents: 20

Estimated Total Annual Responses: 20 (1 per type of information requirement)

Estimated Time Per Response: Varies from 1/4 hour to 80 hours, depending on which information requirement respondent is addressing. Specifically: 43 CFR 3133.4 Royalty reduction (16 hours), 43 CFR 3135.3 Suspension of operations (4 hours), 43 CFR 3135.6 Notification of operations (1/4 hour), 43 CFR 3137.23 Unit designation (80 hours), 43 CFR 3137.25 Notification of unit approval (1 hour), 43 CFR 3137.52 Certification for modification (4 hours), 43 CFR 3137.60 Acceptable bonding (1/2 hour), 43 CFR 3137.61 Change of unit operator (.75 hours), 43 CFR 3137.70 Certification of unit obligation (2 hours), 43 CFR 3137.71 Certification of continuing development (2 hours), 43 CFR 3137.84 Productivity for a PA (12 hours), 43 CFR 3137.87 Unleased tracts (3 hours), 43 CFR 3137.88 Notification of productivity (1/2 hour), 43 CFR 3137.91 Notification of productivity for non-unit well (1/2 hour), 43 CFR 3137.92 Production information (1 hours), 43 CFR 3137.111 Lease extension (3 hours), 43 CFR 3137.112 Inability to conduct operations activities (2 hours), 43 CFR 3137.130 Unit termination (1 hour), 43 CFR 3137.135 Impact mitigation (4 hours) and 43 CFR 3138.11 Storage agreement (80 hours).

Estimated Total Annual Burden Hours: 217 and 1/2 hours.

Abstract: The regulations at 43 CFR subparts 3130, 3133, 3135, 3137, and 3138 provide for operators or operating rights owners to apply for designation of NPRA unit agreements and, if approved by the Bureau of Land Management, to operate under a unit plan on NPRA Federal lands. The operators are required to retain and/or provide data and other relevant information to determine whether proposed unit agreements meet the requirements for unitized exploration and development of oil and gas resources of the NPRA.

Request for Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility, and clarity of the information; and

4. Ways to minimize the information collection burden 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1004–0196.

Dated: January 23, 2008.

Alexandra Ritchie,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. E8–1469 Filed 1–28–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Continuation of Visitor Services

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

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

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
GPMP003–03	Belle Haven Marina, Inc	George Washington Memorial Parkway.
FOMC001–96	Evelyn Hill Corporation	Fort McHenry National Monument and Historic Shrine.
INDE001–94	Concepts by Staid, Ltd	Independence National Historical Park.
SHEN001–85	ARAMARK Sports & Entertainment Services, Inc	Shenandoah National Park.
STLI002–88	Evelyn Hill, Inc	Statute of Liberty National Monument.
CHIS003–98	Truth Aquatics	Channel Islands National Park.
DEVA001–84	Xanterra Parks & Resorts, Inc	Death Valley National Monument.
DEVA002–81	Xanterra Parks & Resorts, Inc	Death Valley National Monument.
GOGA008–88	Demosthemes Hontalas, Thomas Hontalas & William Hontalas.	Golden Gate National Recreation Area.
LACH003–94	Lake Chelan Recreation, Inc	Lake Chelan National Recreation Area.
LAME001–73	Rex G. Maughan & Ruth G. Maughan	Lake Mead National Recreation Area.
LAME002–82	Lake Mead RV Village, LLC	Lake Mead National Recreation Area.
LAM003–94	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME005–97	Rex G. Maughan	Lake Mead National Recreation Area.
LAME006–74	Las Vegas Boat Harbor, Inc	Lake Mead National Recreation Area.
LAME007–84	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME009–88	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME010–71	Seven Resorts Inc	Lake Mead National Recreation Area.
LAVO001–2	California Guest Services, Inc	Lassen Volcanic National Park.
MUWO001–85	ARAMARK Sports & Entertainment, Inc	Muir Woods National Monument
OLYM001–78	ARAMARK Sports & Entertainment, Inc	Olympic National Park.
OLYM002–89	Log Cabin Resort, Inc	Olympic National Park.
OLYM005–87	Forever Resorts, LLC	Olympic National Park.
ROLA003–87	Ross Lake Resort, Inc	Ross Lake National Recreation Area.
YOSE001–98	Best's Studio, Inc	Yosemite National Park.
AMIS002–89	Rex Maughan	Amistad National Recreation Area.
AMIS003–87	Rough Canyon Marina	Amistad National Recreation Area.
BRCA003–84	Xanterra Parks & Resorts, Inc	Bryce Canyon National Park.
CACH001–84	White Dove Inc., dba Thunderbird Lodge	Canyon de Chelly National Monument.
GLAC001–89	Glacier Park Boat Company, Inc	Glacier National Park.
GLCA003–69	ARAMARK	Glen Canyon National Park.
GRCA004–88	Jerman-Mangum Enterprises, Inc	Grand Canyon National Park.
GRCA005–88	Verkamps, Inc	Grand Canyon National Park.
GRTE003–97	Rex G. and Ruth G. Maughan	Grant Teton National Park.
LAMR002–87	Rex Maughan	Lake Meredith National Recreation Area.
MEVE001–82	ARAMARK	Mesa Verde National Park.
PEFO001–85	Xanterra Parks & Resorts, LLC	Petrified Forest National Park.
ZION003–85	Xanterra Parks & Resorts LLC	Zion National Park.

Conc ID No.	Concessioner name	Park
HOSP002–94	Buckstaff Bath House Company	Hot Springs National Park.
OZAR001–88	Shane and Kimberly Van Steenis (Alley Spring Canoe Rental).	Ozark National Scenic Railway.
OZAR012–88	Akers Ferry Canoe Rental Inc	Ozark National Scenic Riverway.
OZAR016–89	Carr's Grocery & Canoe Rental	Ozark National Scenic Riverway.
OZAR018–97	Shane Van Steenis	Ozark National Scenic Riverway.
SLBE005–86	G. Michael Grosvenor (Manitou Island Transit)	Sleeping Bear Dunes National Landmark.
BLRI001–93	Southern Highland Handicraft Guild	Blue Ridge Parkway.
BLRI002–83	Northwest Trading Post, Inc	Blue Ridge Parkway.
BLRI007–82	Forever NPC Resorts, LLC	Blue Ridge Parkway.
CAHA001–98	Avon-Thornton Limited Partnership	Cape Hatteras National Seashore.
CAHA002–98	Cape Hatteras Fishing Pier, Inc	Cape Hatteras National Seashore.
CAHA003–84	Hatteras Island Motel Limited partnership	Cape Hatteras National Seashore.
CAHA004–98	Oregon Inlet Fishing Center, Inc	Cape Hatteras National Seashore.
CALO003–98	Morris Marina, Kabin Kamps & Ferry Service, Inc	Cape Lookout National Seashore.
EVER001–80	Xanterra Parks and Resorts, Inc	Everglades National Park.
EVER002–82	Everglades National Park Boat Tours, Inc	Everglades National Park.
FOSU001–86	Fort Sumter Tours, Inc	Fort Sumter National Monument.
GRSM002–83	Leconte Lodge Limited Partnership	Great Smoky Mountains National Park.
MACA002–82	Forever Resorts, LLC/Forever Resorts, Inc	Mammoth Cave National Park.
VIIS001–71	Caneel Bay, Inc	Virgin Islands National Park.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7456.

Dated: November 26, 2007.

Katherine H. Stevenson,

Acting Assistant Director, Business Services.

[FR Doc. 08–371 Filed 1–28–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, African Burial Ground National Monument, NY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare a General Management Plan and Environmental Impact Statement, African Burial Ground National Monument.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service is preparing a General Management Plan and Environmental Impact Statement (GMP/EIS) for the African Burial Ground National Monument. The park comprises 0.35 acres, in Lower Manhattan, New York, NY.

Prepared by park staff and planners in the NPS Northeast Region, with assistance from advisors and consultants, the GMP/EIS will propose a long-term approach to managing the National Monument. Consistent with the site's purpose, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the monument over the next 15 to 20 years. The alternatives will incorporate various zoning and management prescriptions to ensure resource preservation and public appreciation of the site. The environmental consequences that could result from implementing the various alternatives will be evaluated for cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment, and carrying capacity. Major issues to be explored include resource protection, visitor experience, administration and operation, partnerships, carrying capacity and potential boundary modifications.

The public will be invited to express views about the long-term management of the National Monument early in the process through public meetings and other media; and will have an opportunity to review and comment on a draft GMP/EIS.

ADDRESSES: Information related to ongoing public involvement opportunities will be provided online at *http://www.nps.gov/afbg* and *http://parkplanning.nps.gov.* Requests to be added to the project mailing list should be directed to Tara Morrison, Superintendent, at the addresses below.

FOR FURTHER INFORMATION CONTACT: Tara D. Morrison, Superintendent, African Burial Ground National Monument, 290 Broadway, 1st Floor, New York, NY, 10007, 212.637.3088.

Dated: December 11, 2007.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E8–1542 Filed 1–28–08; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/Environmental Assessment, Finding of No Significant Impact, for Chickasaw National Recreation Area, Oklahoma

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Finding of No Significant Impact for the General Management Plan/Environmental Assessment, Chickasaw National Recreation Area.

SUMMARY: Pursuant to 40 CFR 1501.4(e), the National Park Service has prepared, and hereby announces the availability of, a Finding of No Significant Impact for the General Management Plan/Environmental Assessment, Chickasaw National Recreation Area, Oklahoma.

The Findings of No Significant Impact includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding of no impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a floodplains statement of findings.

SUPPLEMENTARY INFORMATION: The preferred alternative, Alternative B, is

the selected alternative for implementation. The primary focus of this alternative will be on improving selected natural and cultural resources while enhancing visitor facilities and interpretive opportunities. The following actions, among others, will be taken under the preferred alternative: The National Park Service will actively encourage a partnership to identify approaches to managing the Arbuckle-Simpson aquifer; the Vendome Well will be managed to reduce the discharge of groundwater when it is not being used by the public; additional preservation and protection will be provided to the cultural resources within the proposed Platt National Park Historic District; the bison pasture will be restored to prairie and a study will be completed on possibly introducing bison to the Upper Guy Sandy; improvements will be made to the Cold Springs, Central, Point, Buckhorn, and Guy Sandy campgrounds; the trails system in the Rock Creek Corridor will be upgraded; additional day use picnic shelters and shower facilities will be added to the Platt District and new restrooms and fishing dock facilities will be built at Veterans Lake, new restrooms and picnic tables will be added at Lake of the Arbuckles, and a horse camp, staging area, group campsite, and commercial operations (e.g., boat rentals and bus tours) may be provided, additional formal interpretive programs will be provided at the Travertine Nature Center; and maintenance and administrative operations will be relocated outside of the national recreation area or within the area but outside the historic district.

Two other alternatives were considered for Chickasaw National Recreation Area. Under alternative A (no action) the National Park Service would have continued to manage Chickasaw National Recreation Area as it is since the approval of the 1979 General Management Plan Supplement and the 1994 amendment. There would have been no major change in the management of Chickasaw National Recreation Area under this alternative. Management under alternative C would have focused on the protection and restoration of natural and cultural resources. There would have been fewer facilities and a narrower range of visitor opportunities, although there would have been a better opportunity to experience resources in relatively natural or recovering conditions. Some roads or trails would have been removed and revegetated. Some new facilities would have been built, but generally they would have been placed outside Chickasaw National Recreation Area or in previously developed areas.

ADDRESSES: The Finding of No Significant Impact will be available for public review for 30 days online at *http://parkplanning.nps.gov/chic* and in the office of the Superintendent, 1008 West Second Street, Sulphur, OK 73086, (580) 622–3161.

FOR FURTHER INFORMATION CONTACT: Bruce Noble, Superintendent, Chickasaw National Recreation Area, 1008 West Second Street, Sulphur, OK 73086, (580) 622–3161, x7200 *bruce_noble@nps.gov*.

Dated: December 11, 2007.

Bob Moon,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. 08–374 Filed 1–28–08; 8:45 am]

BILLING CODE 4310–2H–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1138 and 1139 (Preliminary)]

Aminotrimethylenephosphonic Acid (ATMP) and 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) From China and India

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigations.

SUMMARY: On January 17, 2008, the Department of Commerce and the Commission received a letter from petitioner in the subject investigations, Compass Chemical International LLC, Huntsville, TX, withdrawing its petition. Commerce has not initiated investigations as provided for in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning ATMP and HEDP from China and India (investigation Nos. 731–TA–1138 and 1139 (Preliminary)) are discontinued.

DATES: *Effective Date:* January 17, 2008

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Issued: January 22, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–1520 Filed 1–28–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1110 (Final)]

Notice of Commission Determination to Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of Chinese producer, Hubei Xingfa Chemical Group Company, Ltd. (Xingfa), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for January 24, 2008, *in camera. See* Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Robin L. Turner, Esq., Office of the General Counsel, United States International Trade Commission, 202–205–3103. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Xingfa has justified the need for a closed session. In this review, significant data for the domestic and foreign producers and subject imports are business proprietary. Xingfa seeks a closed session in order to fully address the issues before the Commission without referring to business proprietary information. In making this decision, the Commission nevertheless reaffirms its belief that

whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by respondents, with questions from the Commission. In addition, the hearing will include a 10-minute *in camera* session for a confidential presentation by Chinese Respondent, Xingfa. This session will be followed by questions from the Commission relating to the BPI and a 10-minute *in camera* rebuttal presentation by petitioners, if needed. Following the *in camera* session, the Commission will reopen the hearing to the public for the public rebuttal/closing statements. During the *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall time allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that a portion of the Commission's hearing in *Sodium Hexametaphosphate from China,* Inv. No. 731–TA–1110 (Final), may be closed to the public to prevent the disclosure of BPI.

Issued: January 22, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–1508 Filed 1–28–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–0002]

Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award

The Secretary of Labor's New Freedom Initiative Award presented by Secretary Elaine L. Chao, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210:

1. *Subject:* The Secretary of Labor's New Freedom Initiative Award.

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the New Freedom Initiative Award, and to solicit the Secretary of Labor's New Freedom Initiative Award nominations.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Background:* To encourage the use of public-private partnerships, the Secretary of Labor will present the Secretary of Labor's New Freedom Initiative Award. Initiated in 2002, this award is made annually to individual(s), non-profit organization(s), or business(es), that have, through programs or activities, demonstrated exemplary and innovative efforts in furthering the employment objectives of President George W. Bush's New Freedom Initiative. See *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

By increasing access to assistive technologies, and by utilizing innovative training, hiring, and retention strategies, the recipient(s) will have established and instituted comprehensive strategies to enhance the ability of Americans with disabilities to enter and advance within the 21st Century workforce and to participate in daily community life.

5. *Eligibility Criteria:* The following criteria apply to the New Freedom Initiative Award Nominees:

A. The nominees must be individuals, businesses, or non-profit organizations whose activities exemplify the goals of President George W. Bush's New Freedom Initiative, which include the Office of Disability Employment Policy's mission of increasing employment opportunities for youth and adults with disabilities. Nominations may be submitted by other persons and entities with the knowledge and permission of the nominee. Self-nomination is also encouraged.

B. Nominees must have developed and implemented a multi-faceted program directed toward increasing employment opportunities for people with disabilities through increased access to assistive technologies, and use of innovative training, hiring, and retention techniques.

C. Federal, State and local government organizations are not eligible for this award.

6. *Nomination Submission Requirements:*

A. The single program or multiple programs for which the individual or company is being nominated must demonstrate a commitment to people with disabilities, and clearly show measurable results in terms of significantly enhancing employment opportunities for people with disabilities. The programs or activities may also address such issues as the widening skills gap among persons with disabilities, a diversified 21st Century workforce, and discrimination based on disability.

B. The nomination packages should be limited to only that information relevant to the nominee's program(s). Nomination packages should be no longer than twenty (20) typed pages double-spaced. A page is 8.5×11 (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. An executive summary prepared by or on behalf of the nominee, which clearly identifies the specific activities, program(s), or establishment under nomination and fully describes the results achieved.

2. A full description of the specific activities, program(s), or establishment for which the nomination is being submitted.

3. Specific data on training, placements, resources expended and other relevant information that will facilitate evaluation of the nominee's submission.

4. A description of how the program(s) and/or activities that are the subject of the nomination have had a positive and measurable impact on the employment of people with disabilities.

5. A data summary on the nominee. See Section 6(D).

6. A report detailing any unresolved violations of State or Federal law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must report any pending Federal or State enforcement actions, and any corrective actions or consent decrees that have resulted from litigation under the Americans with Disabilities Act (ADA) or the laws enforced by the Department of Labor (DOL).

D. A data summary on the Nominee will include the following:

1. Name(s) of the individual, organization or business being nominated.

2. Full street address, telephone number and e-mail address where applicable.

3. Name of highest ranking official(s) (where appropriate).

4. Name of executive(s) responsible for human resources, equal employment opportunity, and/or disability awareness at nominee's establishment and/or corporate office (where appropriate).

5. Name of parent company (where appropriate).

6. Name, street address, telephone number and email address of CEO or

President of parent company (where appropriate).

7. Name, title, street address, telephone number and e-mail address of a contact person.

8. Number of employees at the establishment or business being nominated (where appropriate).

9. Name and description of principal program(s) or service(s).

E. Timing and Acceptable Methods of Submission of Nominations:

Nomination packages must be submitted to Secretary of Labor's New Freedom Initiative Award, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210 by May 30, 2008. Any application received after 4:45 p.m. EDT on May 30, 2008, will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than May 23, 2008.

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. EDT at the place of mailing, May 27, 2008.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, e-mail, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

Confirmation of receipt of your application can be made by contacting Margaret Roffee of the Office of Disability Employment Policy, *nfinomination@dol.gov,* telephone (202) 693–7880, (866) ODEP–DOL, TTY (202) 693–7881, prior to the closing deadline.

7. The Administrative Review Process:

A. The ODEP Steering Committee will perform preliminary administrative review to determine the sufficiency of all submitted application packages.

B. An Executive Evaluation Committee made up of representatives appointed by the Assistant Secretary of Labor, Office of Disability Employment Policy, from Department of Labor employees will perform secondary review.

C. The Secretary of Labor will conduct the final review and selections.

8. Other Factors to be Considered During the Administrative Review Process:

A. If a nominee merges with another company during the evaluation process, only that information relative to the nominated company will be evaluated, and the award, if any, will be limited to the nominated company.

B. Prior receipt of this award will not preclude a nominee from being considered for the New Freedom Initiative Award in subsequent years. Programs and activities serving as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

9. Procedures Following Selection:

A. Awardees will be notified of their selection via the contact person identified in the application package at least six weeks prior to the awards ceremony. Non-selected nominees will also be notified within 45 days of the selection of the awardees.

B. As a precondition to acceptance of the award, the nominee agrees to:

1. Submit to ODEP for review a two-minute video of the program(s) or activity(ies) for which it is being recognized within 30 days of notification of award selection;

2. Participate in any New Freedom Initiative workshops hosted by ODEP in conjunction with or within 12 months following the awards ceremony.

C. The awardee may also display an exhibit or showcase of the program(s)/activity(ies) for which it is being recognized at the awards ceremony, with contents of the display submitted to ODEP for review within 30 days of notification of award selection.

D. Materials developed by the awardees in conjunction with Section 11(B) and (C) will be subject to legal review at the Department of Labor to ensure compliance with applicable ethics standards.

10. Location: The awards ceremony will generally be held during the month of October at a location to be determined by the Secretary of Labor.

Paperwork Reduction Act Notice (Pub. L. 104–13): Persons are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is approved under OMB Number 1230–0002 (Expiration Date: 12/31/2008). The obligation to respond to this information collection is voluntary; however, only nominations that follow the nomination procedures outlined in this notice will receive consideration. The average time to respond to this information of collection is estimated to be 10 hours per response; including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Submit comments regarding this estimate; including suggestions for reducing response time to the U.S. Department of Labor, Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington DC 20210. Please reference OMB Number 1230–0002.

We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Secretary of Labor's New Freedom Initiative Award. Your comments will be very useful to the Office of Disability Employment Policy in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example, whether you thought the instructions were sufficiently clear; what you liked or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you. Please send any comments you have to Margaret Roffee at *nfinomination@dol.gov* or via mail to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of January 2008.

Karen M. Czarnecki,

Acting Assistant Secretary.

[FR Doc. E8–1509 Filed 1–28–08; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of a voluntary survey of visitors to the National Archives Experience (NAE) in Washington, DC. The information will be used to determine how the various components of the NAE affect visitors' level of satisfaction with the NAE and how effectively the venues communicate that records matter. The information will support adjustments in our offerings that will improve the overall visitor experience. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 31, 2008 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: NARA Visitors Study.

OMB Number: 3095–00XX.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the National Archives Experience in Washington, DC.

Estimated number of respondents: 200.

Estimated time per response: 12 minutes.

Frequency of response: On occasion (when an individual visits the National Archives Experience in Washington, DC).

Estimated total annual burden hours: 40 hours.

Abstract: The general purpose of this voluntary data collection is to benchmark the performance of the NAE in relation to other history museums. Information collected from visitors will assess the overall impact, expectations, presentation, logistics, motivation, demographic profile and learning experience. Once analysis has been done, this collected information will assist NARA in determining the NAE's success in achieving its goals.

Dated: January 24, 2008.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E8–1521 Filed 1–28–08; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 75—Safeguards on Nuclear Material, Implementation of US/IAEA Agreement.

2. *Current OMB approval number:* OMB 3150–0055.

3. *How often the collection is required:* Reporting is done when specified events occur. Recordkeeping for nuclear material accounting and control information is done in accordance with specific instructions.

4. *Who is required or asked to report:* Licensees of facilities on the U.S. eligible list who have been selected by the International Atomic Energy Agency (IAEA) for reporting or recordkeeping activities.

5. *The number of annual respondents:* Six, two of which perform both reporting and recordkeeping and four of which perform recordkeeping only.

6. *The number of hours needed annually to complete the requirement or request:* 2,400 (6 Respondents × 400 hours per response).

7. *Abstract:* 10 CFR Part 75 requires selected licensees to permit inspections by IAEA representatives, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. These licensees will also follow written material accounting and control procedures, although actual reporting of transfer and material balance records to the IAEA will be done through the U.S. State system (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150–0003, 3150–0004, 3150–0057, and 3150–0058.) The NRC needs this information to implement its responsibilities under the US/IAEA agreement.

Submit, by March 31, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by e-mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 22nd day of January 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–1507 Filed 1–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 3, to January 16, 2008. The last biweekly notice was published on January 15, 2008 (73 FR 2546).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's

property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include

personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona.

Date of amendment request: November 14, 2007.

Description of amendment request: The proposed amendments would modify the Technical Specifications (TS) by adding Limiting Condition for Operation (LCO) 3.0.8 on the inoperability of snubbers using the Consolidated Line Item Improvement Process (CLIIP). The proposed amendments would also make conforming changes to TS LCO 3.0.1. This request is consistent with NRC-approved Industry/Technical Specification Task Force (TSTF) Traveler No. 372, Revision 4, ''Addition of LCO 3.0.8, Inoperability of Snubbers.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible license amendments adopting TSTF–372 using the NRC's CLIIP for amending licensees' TSs, which included a model safety evaluation (SE) and model no significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252), which included the resolution of public comments on the model SE. The May 4, 2005, notice of availability referenced the November 24, 2004, notice. The licensee has affirmed the applicability of the following NSHC determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change[s] [allow] a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by [these] change[s]. The addition of a requirement to assess and manage the risk introduced by [these] change[s] will further minimize possible concerns. Therefore, [these] change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change[s] [do] not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change[s] [do] not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering [a] supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by [these] change[s] will further minimize possible concerns. Thus, [these] change[s] [do] not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The proposed change[s] [do] not involve a significant reduction in the margin of safety.

The proposed change[s] [allow] a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in [NRC] RG [Regulatory Guide] 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk[, which is required by the proposed TS 3.0.8]. The net change to the margin of safety is insignificant. Therefore, [these] change[s] [do] not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034

NRC Branch Chief: Thomas G. Hiltz.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina.

Date of amendments request: September 29, 2007, as supplemented on December 7, 2007.

Description of amendments request: The amendment would revise the Technical Specification (TS) Administrative Controls section pertaining to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) requirements for inservice testing of pumps and valves. The changes are based on Technical Specification Task Force (TSTF) Traveler TSTF–479, ''Changes to Reflect Revision of 10 CFR 50.55a,'' as modified by TSTF–497, ''Limit Inservice Testing Program SR 3.0.2 Application to Frequencies of 2 Years or Less.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS 5.5.6, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient

events. The proposed change does not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises TS 5.5.6, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or involve a change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released offsite and there is no increase in individual or cumulative occupational exposure. Therefore, the proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises TS 5.5.6, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3. The proposed change does not involve a modification to the physical configuration of the plant (*i.e.*, no new equipment will be installed) or change the methods governing normal plant operation. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Duke Power Company LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of amendment request: November 12, 2007.

Description of amendment request: The amendments would approve proposed changes to the licensing bases and final updated safety analysis report for both the Catawba Nuclear Power Station, Units 1 and 2, and the McGuire Nuclear Power Station, Units 1 and 2, concerning Revision 1 to DPC–NE–1005–P, Nuclear Design Methodology Using CASMO–4/SlMULATE–3 MOX.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed UFSAR change to allow the use of the CASMO–4/SIMULATE–3 MOX reload design software to analyze reactor cores with fuel containing gadolinia does not involve a significant increase in the probability or consequences of an accident previously evaluated. The CASMO–4 and SIMULATE–3 MOX codes are used to perform reactivity and power distribution calculations to develop power distribution limits and provide confirmation of reactivity and power distribution input assumptions used in the evaluation of UFSAR Chapter 15 accidents. The SIMULATE–3 MOX code is also used to confirm the acceptability of thermal limits at post accident conditions. Since the CASMO–4/SIMULATE–3 MOX software is not used in the operation of any plant equipment, the probability of an accident previously evaluated in the UFSAR is not increased.

The benchmark calculations performed in Revision 1 to DPC–NE–1005–P verified the acceptability of the CASMO–4/SIMULATE–3 MOX codes for performing reload design calculations for reactor cores containing gadolinia. These calculations confirmed the accuracy of the codes and developed a methodology for calculating power distribution uncertainties for use in reload design calculations. The use of power distribution uncertainties applicable to gadolinia core designs in conjunction with predicted peaking factors ensures that thermal accident acceptance criteria are satisfied.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The extension of the reload design software to perform reload design calculations for reactor cores containing gadolinia will not create the possibility of a new or different kind of accident from any accident previously evaluated. The CASMO–4/SIMULATE–3 MOX software is not installed in any plant equipment and therefore the software is incapable of initiating an equipment malfunction that would result in a new or different type of accident from any previously evaluated. The evaluation of UFSAR accidents and the associated acceptance criteria for these accidents remains unchanged.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The extension of the CASMO–4/SIMULATE–3 MOX reload design software to perform reload design calculations for reactor cores containing gadolinia will not involve a significant reduction in a margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design function during and following an accident. These barriers include the fuel cladding, the reactor coolant system and the containment system. The reload design process assures the acceptability of thermal limits under normal, transient, and accident conditions. The CASMO–4/SIMULATE–3 MOX reload design software was qualified for the analysis of reactor cores containing gadolinia in Revision 1 to DPC–NE–1005–P and a methodology for developing appropriate power distribution uncertainties for application in reload design analyses was developed. The use of these uncertainties for analysis of reload cores with gadolinia ensures that design and safety limits are satisfied such that the fission product barriers perform their design function.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: John Stang, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts.

Date of amendment request: November 29, 2007.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements related to control room envelope habitability in TS 3.7.B.2 ''Control Room High Efficiency Air Filtration System (CRHEAFS)'' and TS Section 5.5 ''Administrative Controls—Programs and Manuals'' consistent with Technical Specification Task Force (TSTF)-448, Revision 3.

The availability of TS improvement was announced in the **Federal Register** on January 17, 2007 (72 FR 2022), including a model safety evaluation and model no significant hazards consideration (NSHC) determination, as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: January 2, 2008.

Description of amendment request: The proposed amendment revises the action requirements for certain inoperable containment isolation valves in Technical Specification 3/4.6.3, ''Containment Isolation Valves,'' to increase the allowed outage time from 4 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies existing action requirements for inoperable containment isolation valves. The condition evaluated, the Action requirements and the associated allowed outage times do not impact initiating conditions for any accident previously evaluated. Containment integrity will continue to be maintained by the closed system when the proposed actions are implemented. The new action requirement provides appropriate remedial actions to be taken in response to an inoperable containment isolation valve in a closed system while minimizing the risk associated with continued operation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any changes to plant equipment or system design functions. The specification for containment isolation valves provides controls for maintaining the containment pressure boundary. The new action requirement and surveillance requirement are sufficient to ensure that the containment isolation function is maintained. No new accident initiators are introduced by this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The new action requirement does not involve a significant reduction in the margin of safety. The proposed action for an inoperable containment isolation valve in a closed system minimizes the risk of continued operation under the specified conditions, considering the reliability of the closed system (i.e., passive barrier), a reasonable time for repairs or replacement of the isolation feature, and that 72 hours is typically provided for losing one train of redundancy throughout the NUREGs, and the low probability of a design basis accident occurring during the allowed outage time period (reference TSTF [Technical Specifications Task Force]-30). Should the penetration required to be isolated, Technical Specification 3.6.1.1 provides the surveillance requirement to verify at least once every 31 days that the affected penetration flow path is isolated if the penetration is not capable of being closed by operable containment isolation valves. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears

that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Thomas G. Hiltz.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa.

Date of amendment request: November 14, 2007.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to allow use of the requirements of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (the Code), Section XI, Subsection IWE for visual examination of the steel containment. This license amendment request is consistent with NRC approved Technical Specification Task Force (TSTF) Traveler number TSTF–343, Revision 1, ''Containment Structural Integrity.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class MC. The proposed change affects the frequency of visual examinations that will be performed for the containment. The frequency of visual examinations of the containment has no relationship to or adverse impact on the probability of any of the initiating events assumed in the accident analyses. The proposed change would allow visual examinations that are performed pursuant to NRC approved ASME Section Xl Code requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations required by Regulatory Guide 1.163, without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the Code required visual examinations. As such, the safety function of the containment as a fission product barrier is maintained. The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. It does not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the TS administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class MC. The change affects the frequency of visual examinations that will be performed for the containment. The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The safety function of the containment as a fission product barrier is maintained. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the Improved Standard Technical Specification Administrative Controls program requirements for consistency with the requirements of 10 CFR 50, paragraph 55a(g)(4) for components classified as Code Class MC. The change affects the frequency of visual examinations that will be performed for the containment. The safety function of the containment as a fission product barrier will be maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Marjan Mashhadi, Florida Power & Light Company, 801 Pennsylvania Avenue, Suite 220, Washington, DC 20004.

NRC Acting Branch Chief: Cliff Munson.

FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin.

Date of amendment request: December 29, 2007.

Description of amendment request: The amendment would revise the Point Beach Nuclear Plant (PBNP) Units 1 and 2 Technical Specifications (TS) requirement for the completion time (CT) of TS 3.7.5.C. This revision would allow two separate one-time extensions of the CT for TS 3.7.5.C from seven days to 16 days; one extension for each of the train-specific motor-driven auxiliary feedwater (MDAFW) pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The results of the Technical Evaluation (Section 3.0) [of the application] demonstrate that, with the requested change, the increase in the probability of an accident previously evaluated fall within the guidance in RG 1.177 [Regulatory Guide 1.177, An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications]. Therefore, the risk impact of the proposed CT extensions is small.

The ability of the AFW [auxiliary feedwater] system to deliver the required flow to mitigate design basis accidents is maintained. The ability to isolate AFW flow to or steam supply from the affected steam generator during design basis accidents is unaffected by this requested change. The applicable radiological analyses remain bounding.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The requested change to extend the CT of TS 3.7.5.C from 7 days to 16 days to replace a MDAFW pump and motor will not create the possibility of a new or different kind of accident. Two unit-specific TDAFW pump systems and one MDAFW pump system will remain OPERABLE and capable of performing the AFW system function. Prior to taking the MDAFW pump out of service for pump and motor replacement, both unit-specific turbine-driven auxiliary feedwater (TDAFW) pump systems and the other MDAFW pump system will be demonstrated OPERABLE. To ensure that the redundant AFW pump systems remain OPERABLE, risk management actions will be taken that include protecting the redundant operable AFW pump systems.

To manage the fire risk due to a MDAFW pump being inoperable, compensatory measures will be initiated to monitor and ensure that combustible loading, work activities, and other activities that could

increase the likelihood of a fire are minimized. An initial baseline and weekly thermography of potential fire initiators will be performed to detect degrading operating equipment. No new failure will be created.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The ability of the AFW system to deliver the required flow to mitigate design basis accidents will be maintained. The ability to isolate AFW flow to or steam supply from the affected steam generator during design basis accidents is unaffected by this requested change. The applicable radiological analyses remain bounding. No significant reduction in a margin of safety will occur.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Antonio Fernandez, Esquire, Senior Attorney, FPL Energy Point Beach, LLC, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Cliff Munson.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio.

Date of amendment request: September 5, 2007.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3.6.1, 3.6.4, and 3.6.5 to relax the position verification requirements for primary containment isolation devices, secondary containment isolation devices, and drywell isolation devices that are locked, sealed, or otherwise secured. These changes are based on TS Task Force (TSTF) change traveler TSTF–45 (Revision 2) and TSTF–269 (Revision 2), which have been approved generically for the Boiling Water Reactor (BWR) Standard Technical Specifications, NUREG–1434 (BWR/6).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise the position verification requirements for manual containment and drywell isolation devices that are locked, sealed, or otherwise secured in the closed position. Revising the verification requirements will not introduce any physical changes or result in the equipment being operated in a new or different manner. All systems, structures, and components previously required for mitigation of a transient remain capable of performing their designed functions. Furthermore, although the proposed change would revise the position verification requirements, no physical change is being made to the assumed position of the valves for accident analysis. Therefore, this change does not involve a significant increase to the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios or failure mechanisms are introduced as a result of this proposed change. The proposed amendment would revise the position verification requirements but not alter any valve positions. With no changes to the plant lineup, no new or different accidents are possible. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises the position verification requirements for manual containment and drywell isolation valves that are locked, sealed, or otherwise secured in the closed position. The revised position verification requirements have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system. Additionally, position verification does not alter the actual valve positions, introduce any physical changes, or reduce the ability of the valve to control leakage rates during design basis radiological accidents. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Russell Gibbs.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio.

Date of amendment request: September 18, 2007.

Description of amendment request: The proposed license amendment would modify technical specification (TS) requirements related to control room envelope habitability in accordance with Technical Specification Task Force (TSTF) Change Traveler TSTF–448, Revision 3, per the consolidated line item improvement process (CLIIP).

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075–61084), on possible amendments concerning the CLIIP, including a model safety evaluation and a model no significant hazards consideration determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022), as part of the CLIIP. In its application dated September 18, 2007, the licensee affirmed the applicability of the following determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different

kind of accident from any accident previously evaluated.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Russell Gibbs.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida.

Date of amendment request: July 31, 2007.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to impose more restrictive voltage and frequency limits during surveillance testing of the emergency diesel generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LAR [license amendment request] proposes to provide more restrictive steady state voltage and frequency limits for the Emergency Diesel Generators (EDGs). The voltage band is going from a range of greater than or equal to 3933 VAC [volts, alternating current] but less than or equal to 4400 VAC to greater than or equal to 4077 VAC but less than or equal to 4243 VAC. The proposed limits are plus or minus 2% around the nominal safety-related bus voltage of 4160 VAC. The Frequency Limits are going from a 2% tolerance band to a 1% tolerance band around the nominal frequency of 60 Hz (59.4 to 60.6 Hz), for fast starts and emergency starts of the EDGs. These acceptance limits are specifically for steady state conditions following a fast start of the EDGs.

Slow starts will also have a more restrictive frequency band, but it will be slightly larger than for fast starts. The reason for this difference is based on the speed control circuitry for the EDG. The EDG has an electro-mechanical component in the slow start circuitry that is not present in the fast start circuitry. The proposed slow start limits are plus or minus 1.5% (59.1 Hz to 60.9 Hz). The voltage limits for a slow start will be the same as for a fast start.

The EDGs are a safety related system that functions to mitigate the impact of an accident with a concurrent loss of offsite power. A loss of offsite power is typically a significant contributor to postulated plant risk and, as such, onsite AC generators have to be maintained available and reliable in the event of a loss of offsite power event. The EDGs are not initiators for any analyzed accident, therefore; the probability for an accident that was previously evaluated is not increased by this change. The revised, voltage and frequency limits will ensure the EDGs will remain capable of performing their design function.

The consequences of an accident refer to the impact on both the plant personnel and the public from any radiological release associated with the accident. The EDG supports equipment that is supposed to preclude any radiological release. More restrictive voltage and frequency limits for the output of the EDG restores design margin, and provides assurance that the equipment supplied by the EDG will operate correctly and within the assumed timeframe to perform their mitigating functions.

Until the proposed CR–3 ITS [improved TS] EDG voltage and frequency limits are approved, administratively controlled limits have been established in accordance with Administrative Letter 98–10 to ensure all EDG mitigation functions will be performed in the event of a loss of offsite power. These administrative limits have been determined as acceptable and have been incorporated into the Surveillance test procedures under the provisions of 10 CFR 50.59. Periodic testing has been performed with acceptable results. Since EDGs are mitigating components and are not initiators for any analyzed accident, no increased probability of an accident can occur. Since administrative limits will ensure the EDGs will perform as designed, consequences will not be significantly affected.

(2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Administrative voltage limits were established using verified design calculations and the guidance of NRC Administrative Letter 98–10. These administrative limits will ensure the EDGs will perform as designed. No new configuration is established by this change. The administrative limits for the EDG frequency were determined to be sufficient to account for measurement and other uncertainties.

The proposed amendment will place the administrative limits into the CR–3 ITS. The more restrictive voltage and frequency limits will provide additional assurance that the EDG can provide the necessary power to supply the required safety-related loads during an analyzed accident.

The proposed voltage and frequency ITS limits restore the EDG capability to those analyzed. No new configuration is established. Therefore, no new or different kind of accident from any previously evaluated can be created.

(3) Does not involve a significant reduction in a margin of safety.

The LAR proposes to provide more restrictive steady state voltage and frequency limits for the EDGs. The change in the acceptance criteria for specific surveillance testing provides assurance that the EDGs will be capable of performing their design function. Previous test history has shown that the new limits are well within the capability of the EDGs and are repeatable. The frequency ''as left'' setting will be adjusted such that it remains within a tight band and this assures the ''as found'' setting will be in the acceptable band. The requirement to adjust the as left frequency setting as well as the limitations on the frequency as left tolerance have been proceduralized to assure the requirement is satisfied.

The proposed ITS limits on voltage and frequency will assure the EDG will be able to perform all design function assumed in the accident analyses. Administrative limits are in place to ensure these parameters remain within analyzed limits. As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida.

Date of amendment request: October 25, 2007.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) by relocating references to specific American Society for Testing and Materials (ASTM) standards for fuel oil testing to licensee-controlled documents. The proposed change is based on TS Task Force (TSTF) Traveler TSTF–374, ''Revision to TS 5.5.13 and Associated Bases for Diesel Fuel Oil,'' and was submitted using the Consolidated Line Item Improvement Process (CLIIP). Some changes included in TSTF–374, such as the addition of alternate criteria to the ''clear and bright'' acceptance test for new fuel oil, were not included in the application because they are already part of the licensing basis for Crystal River Unit 3.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 22, 2006 (71 FR 9179), on possible amendments to revise plant-specific TSs in accordance with TSTF–374, including a model safety evaluation and model No Significant Hazards Consideration (NSHC) Determination, using the CLIIP. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 21, 2006 (71 FR 20735). The licensee affirmed the applicability of the model NSHC determination in its application dated October 25, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. Requirements to perform testing in accordance with applicable ASTM standards are retained in the TS as are requirements to perform surveillances of both new and stored diesel fuel oil. Future changes to the licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, tests and experiments,'' to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to recognize more rigorous testing of water and sediment content. Relocating the specific ASTM standard references from the TS to a licensee-controlled document and allowing a water and sediment content test to be performed to establish the acceptability of new fuel oil will not affect nor degrade the ability of the emergency diesel generators (DGs) to perform their specified safety function. Fuel oil quality will continue to meet ASTM requirements.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems, and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. In addition, the ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The requirements retained in the TS continue to require testing of the diesel fuel oil to ensure the proper functioning of the DGs.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes relocate the specific ASTM standard references from the Administrative Controls Section of TS to a licensee-controlled document. Instituting the proposed changes will continue to ensure the use of applicable ASTM standards to evaluate the quality of both new and stored fuel oil designated for use in the emergency DGs. Changes to the licensee-controlled document are performed in accordance with the provisions of 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that diesel fuel oil testing is conducted such that there is no significant reduction in a margin of safety.

The ''clear and bright'' test used to establish the acceptability of new fuel oil for use prior to addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The margin of safety provided by the DGs is unaffected by the proposed changes since there continue to be TS requirements to ensure fuel oil is of the appropriate quality for emergency DG use. The proposed changes provide the flexibility needed to improve fuel oil sampling and analysis methodologies while maintaining sufficient controls to preserve the current margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Indiana Michigan Power Company (I&M), Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1 (DCCNP–1), Berrien County, Michigan.

Date of amendment request: December 27, 2007.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Section 3.4.1, ''RCS [Reactor Coolant System] Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' to increase the minimum reactor coolant system (RCS) flow rate from 341,100 to 354,000 gallons per minute. The new analysis is performed using the NRC-approved methodology set forth in Westinghouse Topical Report WCAP–16009–P–A, ''Realistic Large-Break LOCA [Loss-of-Coolant Accident] Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)''; the licensee proposed to endorse this methodology by a revision of Section 5.6.5, ''Core Operating Limits Report (COLR).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has performed its own analysis, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

No. The proposed amendment would revise the subject TS sections to endorse a change in licensing basis, which involves use of an NRC-approved large break LOCA analysis methodology as set forth in Topical Report WCAP–16009–P–A, and to increase the required RCS flow rate. This change in licensing basis does not result in modification of plant design or method of operation that could change initiators of previously analyzed accidents. Further, this change does not modify the design performance of structures, systems, and components, relied upon to mitigate previously analyzed accidents. Thus, DCCNP–1 will continue to operate as before, resulting in no significant increase of the probability of occurrence of any accident previously analyzed, and no significant increase in consequences should any of the previously analyzed accidents occur.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed TS and licensing basis changes would support a modification permitting four-loop injection of the low-head safety injection system, an accident-mitigating system. Accident-mitigating systems are not identified as accident initiators in previously analyzed accidents. There is no modification of other structure, system, or component, and no change to reactor protection system or engineered safeguards feature actuating system setpoints. Accordingly, no new transient or accident event would result due to modification of the low-head safety injection system. In addition, employing the ASTRUM methodology in an analysis does not create any new failure modes that could lead to a different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the models and associated assumptions used to analysis the system's performance. The subject system will continue to perform the same accident-mitigating function to the same level of reliability as defined in the DCCNP–1 Updated Safety Analysis Report. The analysis model to be endorsed by the revised TS is an NRC-approved methodology which will continue to show that DCCNP–1 operates with the same margin of safety. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on its own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Kimberly A. Harshaw, Esquire, One Cook Place, Bridgman, MI 49106.

NRC Acting Branch Chief: Cliff Munson.

Indiana Michigan Power Company (I&M), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan.

Date of amendment request: December 27, 2007.

Description of amendment request: The proposed amendment would modify Technical Specifications (TS) requirements related to control room envelope habitability in TS Section 3.7.10, ''Control Room Emergency Ventilation (CREV) System,'' and Section 5.5, ''Programs and Manuals.'' The proposed changes are consistent with Technical Specification Task Force (TSTF) Standard Technical Specifications (STS) change TSTF–448, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC) by referencing the NRC staff's model NSHC analysis published on January 17, 2007 (72 FR 2022). The NRC staff's model NSHC analysis is reproduced below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's referenced analysis, and has found that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Kimberly A. Harshaw, Esquire, One Cook Place, Bridgman, MI 49106.

NRC Acting Branch Chief: Cliff Munson.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska.

Date of amendment request: November 19, 2007.

Description of amendment request: The proposed changes to the license and Technical Specifications reflect an increase in the rated thermal power from 2381 to 2419 megawatts thermal

(1.62 percent increase) based upon increased feedwater flow measurement accuracy to be achieved by using high accuracy ultrasonic flow measurement instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The comprehensive analytical efforts performed to support the proposed uprate conditions included a review and evaluation of components and systems that could be affected by this change. Evaluation of accident analyses confirmed the effects of the proposed uprate are bounded by the current dose analyses. All systems will function as designed, and all performance requirements for these systems have been evaluated and found acceptable.

The primary loop components (reactor vessel, reactor intemals, control rod drive housings, piping and supports, recirculation pumps, etc.) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components.

All of the Nuclear Steam Supply Systems (NSSS) will still perform their intended design functions during normal and accident conditions. The balance of plant (BOP) systems and components continue to meet their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components. All of the NSSS/BOP interface systems will continue to perform their intended design functions. The safety relief valves and containment isolation valves meet design sizing requirements at the uprated power level.

Because the integrity of the plant will not be affected by operation at the uprated condition, NPPD [Nebraska Public Power District] has concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the core thermal power uncertainty measurement allows a majority of the current safety analyses to be used, with small changes to the core operating limits, to support operation at a core power of 2419 MWt [mmegawatts thermal]. Other analyses performed at a nominal power level have either been evaluated or re-performed for the 1.62% increased power level. The results demonstrate that acceptance criteria of the applicable analyses continues to be met at the 1.62% uprate conditions. As such, all CNS [Cooper Nuclear Station] USAR [updated safety analysis report] Chapter 14 accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. The analyses performed to assess the effects of mass and energy releases remain valid. The source terms used to assess radiological consequences have been reviewed and determined to bound operation at the 1.62% uprated condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier, and from the standpoint of compliance with the required acceptance criteria. As appropriate, all evaluations have been performed using methods that have either been reviewed or approved by the Nuclear Regulatory Commission, or that are in compliance with regulatory review guidance and standards. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Thomas G. Hiltz.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station Unit Nos. 1 (NMP1) and 2 (NMP2), Oswego County, New York.

Date of amendment request: December 20, 2007.

Description of amendment request: The proposed amendment would revise NMPI Technical Specification (TS) 6.3, ''Unit Staff Qualifications,'' and NMP2 TS 5.3, ''Unit Staff Qualifications,'' to update requirements that have been superseded due to the accreditation of the NMPNS licensed operator training program and due to promulgation of the revised Title 10 of the Code of Federal Regulations (10 CFR), Part 55, ''Operators' Licenses,'' which became effective on May 26, 1987 (52 FR 9453). Additionally, the proposed amendment would revise NMP1 TS 6.3 by eliminating the qualification requirement exceptions listed for the position of Manager Operations, and previously approved by the Nuclear Regulatory Commission (NRC) staff. The position of Manager Operations will meet the minimum qualification requirements as required in American National Standard Institute (ANSI) Standard NI8.1–1971, ''American National Standard for Selection and Training of Nuclear Power Plant Personnel.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specifications change to the licensed operator qualification requirements is an administrative change to revise the present operator qualification program to the more current National Academy for Nuclear Training (NANT) guidelines for initial training and qualification of licensed operators. The change conforms to the current requirements of 10 CFR [Part] 55, ''Operators' Licenses.''

Although the licensed operator qualification and training program may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is accredited and is based on a systems approach to training. NMPNS's licensed operator training program is accredited by the Institute of Nuclear Power Operation (INPO) and is based on a systems approach to training.

The proposed Technical Specifications amendment to re-establish a previously revised commitment to administer the standards of ANSI N18.1–1971 for the position of Manager Operations is also an administrative change. The change does not alter the manner in which the plant systems are operated.

Therefore, the proposed changes do not involve a significant increase in probability

or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change to clarify the current requirements for licensed operator qualification and the licensed operator training program are administrative changes, and conform to the requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

Although licensed operator qualification and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rule making process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as the licensed operator training program is accredited and based on a systems approach to training. As previously noted, NMPNS licensed operator training program is accredited by INPO and is based on a systems approach to training.

The proposed TS change to delete a previously approved exception to the qualification requirements contained in ANSI N18.1–1971 for the position of Manager Operations is also an administrative change.

None of the precursors of previously evaluated accidents are affected by these changes, and no new failure modes are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any [accident] previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS change to update the current requirements applicable to licensed operator qualification and the licensed operator training program are administrative changes. The change is consistent with the requirements of 10 CFR [Part] 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualification and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rule making process, and by promulgation of the revised 10 CFR [Part] 55, determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As previously noted, the NMPNS licensed operator training program is accredited by INPO and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal regulations, Part 55 on Operators' Licenses,'' that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO accredited, systems approach based licensed operator training program is equivalent to maintaining an NRC approved licensed operator training program which conforms with applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO accredited licensed operator training program.

In addition, the NRC has published NRC Regulatory Issue Summary 2001–01, ''Eligibility of Operator License Applicants,'' dated January 18, 2001, ''to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator and senior operator license applicants.'' This document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC 's regulations in this area.

The proposed Technical Specifications change to re-establish a previously revised plant commitment to administer the standards of ANSI N18.1–1971 for the position of Manager Operations is an administrative change.

The proposed changes do not involve a physical modification of the plant or involve any changes to the methods in which plant systems are operated. The changes do not, in themselves, adversely affect any physical barrier which could contribute to the release of radiation to plant personnel or to the public.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Branch Chief: Mark G. Kowal.

Nuclear Management Company, LLC, Docket No. 50–282, Prairie Island Nuclear Generating Plant, (PINGP) Unit 1, Goodhue County, Minnesota.

Date of amendment request: August 16, 2007.

Description of amendment request: The proposed amendment would require PINGP monthly Emergency Diesel Generators (EDGS) load test (SR 3.8.1.3) to be performed at or above 90 percent of the diesel generator's continuous power rating. This fulfills the commitment made in the supplement to license amendment request for extension of Technical Specification (TS) 3.8.1, ''AC Sources-Operating,'' Emergency Diesel Generator Completion Time (TAC Nos. MC9001 and MC9002), dated May 10, 2007, Agencywide Documents Access and Management System Accession No. ML071310108.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes Technical Specification Surveillance Requirement changes which will increase the monthly test load for the Unit 1 emergency diesel generators to a load greater than 90% of their continuous rated load which is consistent with the guidance of Regulatory Guide 1.9, ''Application and Testing of Safety-Related Diesel Generators in Nuclear Power Plants'', Revision 4.

The emergency diesel generators are not accident initiators and therefore, these changes do not involve a significant increase [in] the probability of an accident. The proposed changes increase the test load requirements, are consistent with current regulatory guidance for testing emergency diesel generators, and will continue to assure that this equipment performs its design function. Thus these changes do not involve a significant increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes Technical Specification Surveillance Requirement changes which will increase the monthly test load for the Unit 1 emergency diesel generators to a load greater than 90% of their continuous rated load which is consistent with the guidance of Regulatory Guide 1.9, ''Application and Testing of Safety-Related Diesel Generators in Nuclear Power Plants'', Revision 4.

The changes proposed for the emergency diesel generators do not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are functional. The revised test load is consistent with current plant procedures and practices. These changes do not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes Technical Specification Surveillance Requirement changes which will increase the

monthly test load for the Unit 1 emergency diesel generators to a load greater than 90% of their continuous rated load which is consistent with the guidance of Regulatory Guide 1.9, ''Application and Testing of Safety-Related Diesel Generators in Nuclear Power Plants'', Revision 4.

Current plant procedures require the Unit 1 emergency diesel generators to be load tested above 90% of their continuous rated load each month. This license amendment request proposes to make testing above 90% of the Unit 1 emergency diesel generator's continuous rated load a Technical Specification requirement. Since this change is an increase in the test requirements and the change is consistent with current regulatory guidance, this change does not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, General Counsel Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Cliff Munson.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska.

Date of amendment request: October 19, 2007, as supplemented by letter dated December 12, 2007.

Description of amendment request: The proposed amendment modifies Technical Specification (TS) 3.6(3), ''Containment Recirculating Air Cooling and Filtering System.'' The licensee has determined that emergency mode (remotely operated) dampers in the containment air cooling and filtering system (CACFS) can be maintained in their accident positions permanently in all plant operating modes. Surveillance Requirement (SR) 3.6.3.a for testing the CACFS emergency mode (remotely operated) dampers each refueling outage will be deleted and be replaced with an SR to verify that the emergency mode dampers are in their accident positions. The licensee also proposes to delete the SR of TS 3.6(3)b to exercise the remotely operated (emergency mode) dampers at intervals not to exceed 3 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The containment air cooling and filtering system (CACFS) is not an initiator of any accident previously evaluated at the Fort Calhoun Station (FCS). The CACFS is an accident mitigation system. The current licensing basis function of the CACFS is to limit the containment pressure rise by providing a means for cooling the containment following a main steam line break (MSLB) design basis accident (DBA).

The CACFS face and bypass dampers will be aligned to their accident positions permanently causing the CACFS to operate in filtered air mode. Surveillance testing has shown that operating the system in this alignment over long periods does not jeopardize filter performance. Over the lifetime of the plant, the differential pressures measured across the combined high efficiency particulate air (HEPA) and charcoal filter banks have met test acceptance criteria.

With the dampers aligned to their accident positions permanently, the removal of TS requirements to check and exercise the dampers does not adversely affect the function of the CACFS. Each refueling outage, the dampers will be verified to be in their accident positions.

Therefore, the proposed [change] [does] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The CACFS was designed to remove heat released to the containment atmosphere during a DBA to the extent necessary to maintain the containment structure below its design pressure. The face and bypass dampers will be aligned in their accident positions permanently, and the air supply, power, and ventilation isolation actuation signal to these dampers will be removed. Thus, the dampers will no longer have an active function and will not be required to change position under accident conditions.

Each refueling outage, the dampers will be verified to be in their accident positions. The CACFS will continue to operate as before except that filter bypass mode will be unavailable. Surveillance testing has shown that the filters are capable of long-term operation in filtered air mode without degrading their ability to respond to a DBA loss-of-coolant accident (LOCA).

No credible new failure mechanisms, malfunctions, or accident initiators not previously considered in the design and licensing basis are created and none of the initial condition assumptions of any accident evaluated in the safety analysis are impacted.

Therefore, the proposed [change] [does] not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The containment building and associated penetrations are designed to withstand an internal pressure of 60 psig [pounds per square inch gauge] at 305 °F [degrees Fahrenheit], including all thermal loads resulting from the temperature associated with this pressure, with a leakage rate of 0.1 percent by weight or less of the contained volume per 24 hours. The CACFS is credited for maintaining containment pressure and temperatures within design limits. The air coolers are also credited for limiting peak containment pressure for an MSLB.

The CACFS consists of two redundant trains, each train with one air cooling and filtering unit and one air cooling unit, for a total of four cooling units. In accordance with analyses completed for replacement of the FCS steam generators in 2006, operation of the CACFS will continue to be credited in the MSLB containment pressure analysis. The CACFS face and bypass dampers will be aligned to their accident positions permanently. Therefore, TS surveillance requirements to periodically check and exercise these dampers are unnecessary. Each refueling outage, the dampers will be verified to be in their accident positions.

The containment heat removal licensing basis is not adversely affected by the proposed changes. The ability to maintain design limits for containment peak pressure and temperature, as well as long-term containment pressure and temperature, is preserved.

Therefore, the proposed [change] [does] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California..

Date of amendment request: December 17, 2007.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.5.2, ''ECCS [Emergency Core Cooling System]—Operating,'' and TS 3.6.6, ''Containment Spray and Cooling Systems.'' The Diablo Canyon Power Plant ECCS consists of three separate subsystems: centrifugal charging, safety injection, and residual heat removal. The proposed changes to TS 3.5.2 would add new required actions and extend the Completion Time (CT) of the ECCS from 72 hours to 14 days.

Similarly, the proposed change to TS 3.6.6 involves extending the CT for one inoperable containment spray train from 72 hours to 14 days. These amendments are risk-informed licensing changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [Do] the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes increase the Emergency Core Cooling System (ECCS) completion time (CT) to 14 days when one subsystem of one ECCS train is inoperable. Similarly, the proposed changes also increase the containment spray (CS) system CT to 14 days when one CS train is inoperable. These proposed changes do not physically alter any plant structures, systems, or components, and are not accident initiators; therefore, there is no effect on the probability of accidents previously evaluated. When one or more ECCS trains is inoperable, the Technical Specifications (TS) still requires at least 100 percent of the ECCS flow equivalent to a single OPERABLE ECCS train available. Similarly, when one CS train is inoperable, the TS still requires the redundant CS train to be OPERABLE. Therefore, redundant system and subsystems are still able to perform their safety functions. Also the proposed changes do not affect the types or amounts of radionuclides released following an accident, or affect the initiation and duration of their release. Therefore the consequences of accidents previously evaluated, which rely on the ECCS and CS system to mitigate, are not significantly increased.

Therefore, the proposed change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [Do] the proposed change[s] create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

There are no new failure modes or mechanisms created due to plant operation with an extended CT. Extended operation with one ECCS train with one subsystem inoperable or with one train of CS system inoperable does not involve any modification to the operational limits or physical design of the systems. There are no new accident precursors generated due to the extended CT.

Therefore, the proposed change[s] [do] not create the possibility of a new or different accident from any accident previously evaluated.

3. [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The proposed change[s] [are] based upon both a deterministic evaluation and a risk-informed assessment. The deterministic evaluation concluded that though one ECCS train is inoperable for a longer period of time, the availability of the redundant OPERABLE ECCS train can still perform its safety function. Similarly, though one train of the CS system is inoperable for a longer period of time, the redundant OPERABLE CS train can still perform its safety function by providing at least the minimum spray flow to the containment assumed in the accident analyses.

The risk assessment performed to support this license amendment request concluded that the increase in plant risk is small and consistent with the NRC's Safety Goal Policy Statement, ''Use of Probabilistic Risk Assessment Methods in Nuclear Activities: Final Policy Statement,'' and guidance [contained in] of Regulatory Guides (RG) 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications.''

Together, the deterministic evaluation and the risk-informed assessment provide assurance that the ECCS and the CS system will still meet their design requirements with the longer CTs proposed.

Therefore, the proposed change[s] [do] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Thomas G. Hiltz.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California.

Date of amendment request: December 26, 2007.

Description of amendment request: The proposed amendments would modify the Technical Specification (TS) to establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' Specifically, the proposed amendments would modify TS 3.7.10, ''Control Room Ventilation System (CRVS),'' and would establish a CRE habitability program in TS Section 5.5, ''Administrative Controls—Programs and Manuals.'' The NRC staff issued a ''Notice of Availability of Technical Specification Improvement to Modify Requirements Regarding Control Room Envelope Habitability Using the Consolidated Line Item Improvement Process'' associated with TSTF–448, Revision 3, in the **Federal Register** on January 17, 2007 (72 FR 2022). The notice included a model safety evaluation, a model no significant hazards consideration (NSHC) determination, and a model license amendment request. In its application dated December 26, 2007, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as

assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves NSHC.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Thomas G. Hiltz.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendment request: November 5, 2007.

Description of amendment request: The proposed amendments would revise Facility Operating License No. NPF–2 and Facility Operating License No. NPF–8 for Farley Nuclear Plant (FNP), Units 1 and 2, specifically, TS Section 5.5.17, ''Containment Leakage Rate Testing Program,'' to resolve a timing conflict between the FNP, Unit 2 R20 refueling outage schedule and the 15-year test date for the FNP, Unit 2 Type A Containment Integrated Leak Rate Test (ILRT), which has a required completion date of March 2010. Although Unit 1 does not have a current timing conflict, a similar Unit 1 change is proposed for consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to Technical Specifications 5.5.17, ''Containment Leakage Rate Testing Program,'' resolves a schedule conflict between the Farley Nuclear Plant (FNP) Unit 2 refueling outage and the fifteen (15) year Containment Integrated Leak Rate Test date that is currently stated in the FNP Technical Specifications. The previous Integrated Leakage Rate Tests were completed in March 1994 for FNP Unit 1 and March 1995 for FNP Unit 2. A 15 year deferral, granted by Amendments No. 159 and No. 150, placed the next integrated leak rate testing for FNP Unit 1 in March 2009 and FNP Unit 2 in March 2010. Due to minor variations in the refueling outage schedule, the current refueling outage for FNP Unit 2 has been scheduled for April 3, 2010 (Spring 2010). The Type A testing will begin during the FNP Unit 2 refueling outage which is three days after the 15 year time period from the March 1995 date that is currently stated in the revised FNP Technical Specifications (TS). This proposed change will revise FNP TS section 5.5.17 to include the current refueling outage schedule R22 (Spring 2009) for Unit 1 and R20 (Spring 2010) for Unit 2. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the reactor containment exists to ensure the plant's ability to mitigate the consequences of an accident, and does not involve the prevention or identification of any precursors of an accident. Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

Type B and C containment leakage testing will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. FNP test history listed in letter from Southern Nuclear Operating Company to the Nuclear Regulatory Commission dated April 4, 2002 supports this conclusion. The basis and the conclusions reached in the significant hazards evaluation provide in the original SNC amendment request for the ILRT interval extension remain valid and unchanged. Therefore, this change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change will revise FNP TS section 5.5.17 to include the current refueling outage schedule of R22 for Unit 1 and R20 for Unit 2. The basis and the conclusions reached in the significant hazards evaluation provided in the original amendment request for the ILRT interval extension provided in the original amendment request for the ILRT interval extension remain valid and unchanged.

The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant decrease in a margin of safety?

Response: No.

This proposed change will revise FNP TS section 5.5.17 to include the current refueling outage schedule of R22 for Unit 1 and R20 for Unit 2. The basis and the conclusions reached in the significant hazards evaluation provided in the original amendment request for the ILRT interval extension remain valid and unchanged. The proposed Technical Specifications change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Containment Leakage Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rate limit specified by Technical Specifications is maintained. Type B and C containment leakage testing will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. FNP test history listed in a letter from Southern Nuclear Operating Company dated April 4, 2002 to the Nuclear Regulatory Commission supports this conclusion. Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above, Southern Nuclear Operating Company concludes that the

proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92, and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: John Stang, Acting Chief.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia.

Date of amendment request: January 9, 2008.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation,'' Function 7.b, and TS 3.5.4, ''Refueling Water Storage Tank (RWST),'' Surveillance Requirement (SR) 3.5.4.2. The proposed change to TS 3.3.2 lowers the Nominal Trip setpoint and corresponding Allowable Value of the Refueling water Storage Tank (RWST) Level—Low Low at which the semi-automatic switchover from the RWST to the containment emergency sump occurs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

TS 3.3.2, ''ESFAS Instrumentation,'' Table 3.3.2–1 (page 6 of 7), ''Engineered Safety Feature Actuation System Instrumentation,'' Function 7.b:

No. The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that decreases the Allowable Value and Nominal Trip Setpoint (NTS) of the semi-automatic switchover to containment sump (RWST Level—Low Low) does not have a detrimental impact on the integrity of any plant structure, system, or component (SSC) that initiates an analyzed event. The change does not adversely affect the protective and mitigative capabilities of the plant, nor does the change impact the initiation or probability of occurrence of any accident. The SSCs will continue to perform their intended safety functions.

The minimum containment sump pH used in calculating the radiological consequences for a LOCA remains bounding. The offsite and control room doses will continue to meet the requirements of 10 CFR 100 (Reactor Site Criteria) and 10 CFR 50 Appendix A GDC 19 (General Design Criteria—Control Room).

The proposed AV and NTS for TS Table 3.3.2–1, Function 7.b were determined using an uncertainty methodology previously approved by the NRC for this application. These values provide adequate assurance that required protective and mitigative functions will be initiated as assumed in the transient and accident analyses. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

TS 3.5.4, ''Refueling Water Storage Tank (RWST),'' SR 3.5.4.2:

No. The proposed change that increases the RWST borated water volume does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The RWST borated water volume is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected.

The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended safety functions to mitigate the consequences of an initiating event within the assumed acceptance limits. The impact on the containment flood level, equipment qualification, and containment sump pH remains within the limits assumed in the design and accident analyses. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

The proposed change will not alter the operation of, or otherwise increase the failure probability of, any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Based on the above discussions, the proposed TS changes do not involve an increase in the consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. The possibility of a new or different malfunction of safety-related equipment is not created. No new accident scenarios, transient precursors, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Based on this evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes to the semi-automatic switchover to the containment sump RWST Level—Low Low AV and NTS and to the required RWST minimum borated water volume do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside of the design basis. The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intending function to mitigate the consequences of an initiating event within the applicable acceptance criteria.

The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The minimum and maximum pH values remain bounding; therefore, the required amount of trisodium phosphate (TSP) remains unchanged. The impact on the containment flood level, equipment qualification, hydrogen produced by the corrosion of galvanized surfaces and zinc based paints, and chloride induced stress corrosion remains within the limits assumed in the design and accident analyses.

There will be no effect on the manner in which the Safety Limits or Limiting Safety System Settings are determined, nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: John Stang, Acting Chief.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of applications for amendments: February 27, 2007.

Brief description of amendments: These amendments modify Technical Specification (TS) 4.2.1, ''Fuel Assemblies,'' to permit up to four lead fuel assemblies (LFAs) with advanced cladding material to be inserted into the Unit 1 core for operating cycle 19 which is scheduled to begin in April 2008. Two of the LFAs were manufactured by Westinghouse Electric Company and contain a limited number of fuel rods with advanced zirconium-based alloys. The other two LFAs were manufactured by AREVA with fuel rod cladding material classified as M5™ alloy. These LFAs, which were originally inserted into the Unit 2 core in April 2003, remained there for operating cycles 15 and 16 and were subsequently removed in April 2007. These amendments also modify TS 5.6.5, ''Core Operating Limits Report (COLR),'' for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, to include WCAP–15604–NP, ''Limited Scope High Burnup Lead Test Assemblies,'' as an approved analytical method for extended LFA burnup limits.

Date of issuance: December 20, 2007.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 283 and 260.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** *April 24, 2007 (72 FR 20377).*

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 20, 2007.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of application for amendments: February 1, 2007, as supplemented by letter dated August 17, 2007.

Brief description of amendments: These amendments revise Surveillance Requirement 3.5.2.8 in Technical Specification 3.5.2, ''ECCS—Operating,'' to reflect the replacement of the containment recirculation sump suction inlet trash racks and screens with strainers. The containment recirculation sump suction inlet trash racks and screens are being replaced with a strainer design with significantly larger effective surface area in response to Nuclear Regulatory Commission Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors.''

Date of issuance: December 27, 2007.

Effective date: As of the date of issuance to be implemented within 60 days following completion of the installation and testing of the plant modifications described in the licensee's letters dated February 1 and August 17, 2007.

Amendment Nos.: 284 and 261.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of initial notice in Federal Register: March 13, 2007 (72 FR 11385).

The letter dated August 17, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 27, 2007.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina.

Date of application for amendments: December 21, 2006.

Brief Description of amendments: The amendments change the Technical Specifications (TSs) related to the reactor recirculation system flow balance.

Date of issuance: December 17, 2007.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment Nos.: 244 and 272.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments changed the TSs.

Date of initial notice in ***Federal Register:*** March 13, 2007 (72 FR 11385).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of application for amendment: July 17, 2007, as supplemented on August 13, 2007.

Brief description of amendment: The proposed amendment would revise action and surveillance requirements related to control room envelope (CRE) habitability in Technical Specification (TS) Section 3.7.3 ''Control Room Emergency Ventilation Air Supply (CREVAS) System,'' and adds a new administrative controls program, TS Section 5.5.14, ''Control Room Envelope Habitability Program.'' In addition, the proposed amendment adds a license condition which specifies the schedule for performing the new surveillance and assessment requirements for the Control Room Envelope Habitability Program, and corrects a typographical error in Appendix C of the license. The changes are consistent with NRC-approved Revision 3 to Technical Specifications Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–448, ''Control Room Habitability.'' TSTF–448, Revision 3 is a proposal to establish more effective and appropriate action, surveillance, and administrative TS requirements related to ensuring the habitability of the control room envelope.

Date of issuance: January 3, 2008.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 289.

Facility Operating License No. DPR–59: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 11, 2007 (72 FR 51854).

The August 13, 2007, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 3, 2008.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California.

Date of application for amendments: January 11, 2007, as supplemented by letters dated August 9, and September 28, 2007.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to support replacement of the steam generators (SGs). They revise TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' TS 5.5.9, ''Steam Generator (SG) Program,'' and TS 5.6.10, ''Steam Generator (SG) Tube Inspection Report.''

Date of issuance: January 8, 2008.

Effective date: As of its date of issuance and shall be implemented prior to entry into Mode 4 following the 14th refueling outage for Unit 2 and prior to entry into Mode 4 following the 15th refueling outage for Unit 1.

Amendment Nos.: Unit 1—198; Unit 2—199.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 13, 2007 (72 FR 6787).

The supplemental letters dated August 9, and September 28, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 2008.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 6, 2007.

Brief Description of amendments: These amendments authorized revisions to the Updated Final Safety Analysis Report (UFSAR) to permit irradiation of the fuel assemblies beginning with Surry Power Station, Unit Nos. 1 and 2, improved fuel assemblies with ZIRLO (Westinghouse trademark) cladding to a lead rod average burnup of 62,000 MWD/MTU.

Date of issuance: December 19, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days. The UFSAR changes shall be implemented in the next periodic update made in accordance with 10 CFR 50.71(e).

Amendment Nos.: 257, 256.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments changed the licenses.

Date of initial notice in ***Federal Register:*** March 27, 2007 (72 FR 14309).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 2007.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time

for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion, which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Duke Power Company LLC, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1 York County, South Carolina.

Date of amendment request: January 1, 2008, as supplemented January 2, 2008.

Description of amendment request: The amendment approved a one-time extension of the allowed outage time (AOT) for the 1B centrifugal charging (NV) pump beyond the 72 hours allowed by the Technical Specifications (TSs) up to a total of 240 hours as part of the 1B NV pump repair. In addition, the amendment approved a one-time extension for the auxiliary building filtered ventilation exhaust system (ABFVES), to have two ABFVES trains inoperable.

Date of issuance: January 2, 2008.

Effective date: January 2, 2008.

Amendment No.: 239.

Facility Operating License No. (NPF–68): Amendment revised the technical specifications and license.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated January 2, 2008.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Acting Branch Chief: John F. Stang, Acting.

Dated at Rockville, Maryland, this 17th day of January 2008.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–1300 Filed 1–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Independent External Review Panel to Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's Materials Licensing Program: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: NRC will convene a meeting of the Independent External Review Panel to Identify Vulnerabilities in the U.S. Nuclear Regulatory Commission's (NRC) Materials Licensing Program on February 8, 2008. A copy of the agenda for the meeting can be obtained by e-mailing Mr. Aaron T. McCraw at the contact information below.

Purpose: To serve as a forum for members of the public to provide oral comments on the Panel's interim observations and recommendations that will be documented in its draft report.

Date and Time for Closed Sessions: February 8, 2008, from 10 a.m. to 12 p.m. This session will be closed so that the Review Panel can receive a classified briefing pursuant to 5 U.S.C. 552b (c)(1).

Date and Time for Open Session: February 8, 2008, from 1:30 p.m. to 3:30 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland 20852. Specific room location will be indicated on the agenda.

Public Participation: Any member of the public who wishes to participate in the meeting should contact Mr. McCraw using the information below.

Contact Information: Aaron T. McCraw, e-mail: *atm@nrc.gov,* telephone: (301) 415–1277.

Conduct of the Meeting

Mr. Thomas E. Hill will chair the meeting. Mr. Hill will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Mr. McCraw at the contact information listed above. All submittals must be received by February 1, 2008, and must pertain to the topics on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852–2738, telephone (800) 397–4209, on or about June 1, 2008.

4. Persons who require special services, such as those for the hearing impaired, should notify Mr. McCraw of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

Dated: January 23, 2008.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E8–1499 Filed 1–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials; Meeting Notice

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold its 186th meeting on February 12–14, 2008, at 11545 Rockville Pike, Rockville, Maryland.

Tuesday, February 12, 2008, Room T–2B3

10 a.m.–10:05 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

10:05 a.m.–11:30 a.m.: Semiannual Briefing by the Office of Nuclear Material Safety and Safeguards (NMSS) (Open)—NMSS Office Director and Division Directors will brief the Committee on recent and future activities of interest within their respective programs.

11:30 a.m.–12:00 p.m.: Discussion of ACNW&M Letter Reports (Open)—Discussion of proposed and potential ACNW&M letter reports.

1 p.m.–2:30 p.m.: Draft Guidance on Preventing Legacy Sites (Open)—A representative from the Office of Federal and State Materials and Environmental Management Programs (FSME) will brief the Committee on the draft guidance prepared as part of the Decommissioning Planning and Rulemaking.

2:45 p.m.–4 p.m.: Corrosion of Waste Package and Spent Fuel Dissolution in a Repository Environment (Open)—NRC staff representatives from the Division of High-Level Waste and Repository Safety (DHLWRS), Office of Nuclear Material Safety and Safeguards, will brief the Committee on waste package corrosion and spent fuel dissolution under potential repository conditions.

4 p.m.–5:30 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will discuss potential and proposed ACNW&M letter reports.

Wednesday, February 13, 2008, Room T–2B3

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: ACNW&M Meeting with NRC Commissioner Peter B. Lyons (Open)—Commissioner Lyons will address the Committee on current topics and issues of common interest.

9:30 a.m.–12 p.m.: Discussion of ACNW&M Letter Reports (Open)—The Committee will discuss potential and proposed ACNW&M letter reports.

1 p.m.–5 p.m.: ACNW&M Working Group Meeting on Managing Low Activity Radioactive Waste (LAW) (Open)—The purpose of this Working Group Meeting is to understand how low-activity radioactive waste (LAW) is being managed in the United States, and to determine if there are ways to improve its management.

1 p.m.–1:15 p.m.: Greetings and Introductions (Open)—Introductory remarks by Dr. Michael Ryan.

1:15 p.m.–2:30 p.m.: Session I: What is LAW (Open)—Dr. Michael Ryan will provide an overview of the expected goals for the Working Group Meeting, the planned technical sessions, and introduce the invited speakers. Two presentations will follow Dr. Ryan's overview.

2:45 p.m.–4:45 p.m.: Session II: Risk-Based Approaches to the Regulation of LAW (Open)—This session includes four presentations.

Thursday, February 14, 2008, Room T–2B3

8:30 a.m.–4:15 p.m.: ACNW&M Working Group Meeting on Managing Low Activity Radioactive Waste (LAW) (Open)—Continued from the previous day.

8:30 a.m.–12 p.m.: Session III: Alternative Disposal Methods for LAW (Open)—Several case studies will be discussed during this session.

1 p.m.–3:30 p.m.: Session IV: Working Group Meeting Impressions and Recommendations (Open)

3:45 p.m.–4:15 p.m.: International Commission on Radiological Protection (ICRP) Draft Report on Environmental Protection: The Concept and Use of Reference Animals and Plants (Open)—Representatives of the NRC staff will discuss with the Committee preliminary views regarding the new ICRP's Draft Report on Environmental Protection.

4:15 p.m.–5 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW&M activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include content of future letters and scope of future Committee Meetings.

Procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54693). In accordance with those procedures, oral or written views may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Dr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. (ET), as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the ACNW&M Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW&M office prior to the meeting. In view of the possibility that the schedule for ACNW&M meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Dr. Dias.

Video teleconferencing service is available for observing open sessions of ACNW&M meetings. Those wishing to use this service for observing ACNW&M meetings should contact Mr. Theron Brown, ACRS/ACNW&M Audio Visual Assistant (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

During the days of the meeting, phone number 301–415–7360 should be used in order to access anyone in the ACNW&M Office.

ACNW&M meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/acnw* (ACNW&M schedules and agendas).

Dated: Jaunary 23, 2008.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E8–1497 Filed 1–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of January 28, February 4, 11, 18, 25, March 3, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters to be Considered

Week of January 28, 2008

There are no meetings scheduled for the Week of January 28, 2008.

Week of February 4, 2008—Tentative

There are no meetings scheduled for the Week of February 4, 2008.

Week of February 11, 2008—Tentative

There are no meetings scheduled for the Week of February 11, 2008.

Week of February 18, 2008—Tentative

Wednesday, February 20, 2008

9:30 a.m.

Periodic Meeting on New Reactor Issues, Part 1 (Public Meeting) (Contact: Donna Williams, 301–415–1322)

1:30 p.m.

Periodic Meeting on New Reactor Issues, Part 2 (Public Meeting) (Contact: Donna Williams, 301–415–1322)

This meeting, parts 1 and 2, will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 25, 2008—Tentative

There are no meetings scheduled for the Week of February 25, 2008.

Week of March 3, 2008—Tentative

There are no meetings scheduled for the Week of March 3, 2008.

*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.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 24, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 08–393 Filed 1–25–08; 12:02 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–07–027]

In the Matter of Mr. Jon Brumer; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Jon Brumer was employed as a security officer by The Wackenhut Corporation, which provided security services at Florida Power & Light Company's Turkey Point Nuclear Plant (Licensee) during August 2005 through February 2006. Licensee is the holder of License No. DPR–31 and DPR–41, issued by the Nuclear Regulatory Commission (NRC or Commission) on July 19, 1972, and April 10, 1973, respectively, pursuant to 10 CFR Part 50. The license authorizes the operation of Turkey Point Nuclear Plant (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Florida City, Florida.

II

On February 16, 2006, the NRC initiated an Augmented Inspection Team on-site inspection to review security-related matters at the facility. Subsequently, an investigation was initiated by the NRC's Office of Investigations (OI) during February 2006, in response to concerns identified by the NRC during the on-site inspection. During the inspection and investigation, the NRC became aware of an incident involving a firing pin that had been removed from a contingency response weapon and was subsequently determined to be broken. NRC inspection confirmed that the missing firing pin rendered the weapon non-functional, and as a result, FPL was determined to be in violation of 10 CFR Part 73, Physical Security Plan Section 4.1, and Security Force Instruction 2404, Section 2.3, Revision 21.

On February 19, 2006, Mr. Jon Brumer provided a transcribed statement to OI regarding his involvement in the breaking of a firing pin that was later determined to be incomplete and inaccurate in a material respect. Specifically, Mr. Jon Brumer initially denied having any knowledge associated with the broken firing pin event. Mr. Jon Brumer later recanted and admitted removing and breaking the firing pin. This information was material to the NRC as it was used to inform the timing and nature of regulatory actions related to a serious security matter at FPL's facility. As a result, Mr. Jon Brumer's actions were determined to be in violation of 10 CFR 50.5(a)(2), which states, in part, that an employee of a contractor may not deliberately submit to the NRC, a licensee, or a licensee's contractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

III

Based on the above, the NRC concluded that Mr. Jon Brumer, a former employee of The Wackenhut Corporation, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR Part 73, Physical Security Plan Section 4.1, and Security Force Instruction 2404, Section 2.3, Revision 21. The NRC must be able to rely on the Licensee, its contractors, and its employees to comply with NRC requirements. Mr. Jon Brumer's violation of 10 CFR 50.5(a)(1), which caused the Licensee to be in violation of 10 CFR Part 73 and the Physical Security Plan, and his additional violation of 10 CFR 50.5(a)(2), have raised serious doubts as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, and that common defense and security will be achieved if Mr. Jon Brumer were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Jon Brumer be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Jon Brumer is required to notify the NRC of his first employment in NRC-licensed activities for a period of three years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Jon Brumer's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered,* effective immediately, that:

1. Mr. Jon Brumer is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Jon Brumer is currently involved with another licensee in performing NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of three years after the five year period of prohibition has expired, Mr. Jon Brumer shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Jon Brumer shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Jon Brumer of good cause.

V

In accordance with 10 CFR 2.202, the Mr. Jon Brumer must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, the Mr. Jon Brumer and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension. A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper

copies of their filings unless they seek a waiver in accordance with the procedures described below. To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately.

Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application. Participants are requested not to include copyrighted materials in their works.

If a person other than the Mr. Jon Brumer requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by Mr. Jon Brumer or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Jon Brumer, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of January 2008.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E8–1488 Filed 1–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–07–029]

In the Matter of Mr. Oscar Aguilar; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Oscar Aguilar was employed as a security officer by The Wackenhut Corporation, which provided security services at Florida Power & Light Company's Turkey Point Nuclear Plant (Licensee) during April of 2004. Licensee is the holder of License No. DPR–31 and DPR–41, issued by the Nuclear Regulatory Commission (NRC or Commission) on July 19, 1972, and April 10, 1973, respectively, pursuant to 10 CFR Part 50. The license authorizes the operation of Turkey Point Nuclear Plant (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Florida City, Florida.

II

On February 16, 2006, the NRC initiated an Augmented Inspection

Team on-site inspection to review security-related matters at the facility. Subsequently, an investigation was initiated by the NRC's Office of Investigations (OI) during February 2006, in response to concerns identified by the NRC during the on-site inspection. During the investigation and inspection, the NRC became aware of an incident involving firing pins that had been removed from two contingency response weapons in April 2004. NRC inspection confirmed that the missing firing pins rendered the weapons non-functional, and as a result, FPL was determined to be in violation of NRC Order and Interim Compensatory Measures, dated February 25, 2002, Section B.4(f). During the OI investigation, Mr. Oscar Aguilar confessed under oath to deliberately removing the firing pins from the contingency response weapons.

III

Based on the above, it appears that Mr. Oscar Aguilar, a former employee of The Wackenhut Corporation, has engaged in deliberate misconduct that has caused the Licensee to be in violation of NRC Order and Interim Compensatory Measures, dated February 25, 2002, Section B.4(f). The NRC must be able to rely on the Licensee, its contractors, and its employees to comply with NRC requirements. Mr. Oscar Aguilar's actions in causing the Licensee to violate the NRC Order and Interim Compensatory Measures, dated February 25, 2002, Section B.4(f), have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, and that common defense and security will be achieved if Mr. Oscar Aguilar were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Oscar Aguilar be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Oscar Aguilar is required to notify the NRC of his first employment in NRC-licensed activities for a period of three years following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Oscar Aguilar's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered,* effective immediately, that:

1. Mr. Oscar Aguilar is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Oscar Aguilar is currently involved with another licensee in performing NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of three years after the five-year period of prohibition has expired, Mr. Oscar Aguilar shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Oscar Aguilar shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Oscar Aguilar of good cause.

V

In accordance with 10 CFR 2.202, Mr. Oscar Aguilar must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Mr. Oscar Aguilar and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary

that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD__Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Mr. Oscar Aguilar requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by Mr. Oscar Aguilar or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Oscar Aguilar, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of January, 2008.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E8–1489 Filed 1–28–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Acceptance of Competitive Need Limitation Waiver Petitions for the 2007 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in connection with the 2007 GSP Annual Review to waive the competitive need limitations (CNLs) on imports of certain products that are eligible for duty-free treatment under the GSP program. This notice announces those petitions that are accepted for further review. This notice also sets forth the schedule for comment and public hearings on these petitions, for requesting participation in the hearings, and submitting pre-hearing and post-hearing briefs, and for commenting on the USITC report on probable economic effects. The list of accepted petitions to waive CNLs is available at: *http://www.ustr.gov/Trade_Development/Preference_ Programs/GSP/GSP_ 2007_Annual_ Review/Section_ Index.html* [2007 GSP Review, List of CNL Waiver Petitions Accepted in the 2007 GSP Annual Review]

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The current schedule with respect to the review of CNL waiver petitions is set forth below. Notification of any other changes will be given in the **Federal Register**.

February 22, 2008: Due date for submission of pre-hearing briefs, requests to appear at the GSP Subcommittee Public Hearing, and hearing statements. Include the name, address, telephone, fax, e-mail address and organization of witnesses for accepted CNL waiver petitions on the submission of pre-hearing briefs and requests to appear at the Hearing.

March 4, 2008: GSP Subcommittee Public Hearing on all CNL waiver petitions accepted for the 2007 GSP Annual Review in Rooms 1 and 2, 1724 F St., NW., Washington, DC 20508, beginning at 9 a.m.

March 14, 2008: Due date for submission of post-hearing briefs.

May 2008: USITC scheduled to publish report on products for which CNL waivers have been requested in the 2007 GSP Annual Review (cases 2007–12 to 2007–16). Comments on the USITC report on these products are due 10 calendar days after USITC date of publication.

June 30, 2008: Modifications to the list of articles eligible for duty-free treatment under the GSP resulting from the 2007 Annual Review will be announced on or about June 30, 2008, in the **Federal Register**, and any changes will take effect on the effective date announced.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of eligible articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In **Federal Register** notices dated May 21, 2007, and October 24, 2007, USTR announced that the deadline for the filing of product petitions requesting waivers of ''competitive need limitations'' (CNLs) for the 2007 GSP Annual Review was November 16, 2007 (72 FR 28527 and 72 FR 60395). The interagency GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has reviewed the CNL waiver petitions, and the TPSC has decided to accept for review the following petitions:

(1) Cucumbers including gherkins, prepared or preserved by vinegar or acetic acid from India (HTS 2001.10.00);

(2) Polyethylene terephthalate Resin (PET Resin) from Indonesia (HTS 3907.60.00);

(3) New pneumatic rubber radial tires for passenger vehicles from Indonesia (HTS 4011.10.10);

(4) Full grain unsplit bovine (not buffalo) & equine leather, not whole, w/o hair on, nesoi from Argentina (HTS 4107.91.80)

(5) Copper, cables, plaited bands and the like, not fitted with fittings and not made up into articles from Turkey (HTS 7413.00.50)

Additional information regarding this request is provided in ''List of CNL Waiver Petitions Accepted in the 2007 GSP Annual Review'' posted on the USTR Web site. That list sets forth: The case number, the Harmonized Tariff Schedule of the United States (HTSUS) subheading number, a brief description of the product (*see* the HTSUS for an authoritative description available on the USITC Web site (*http://www.usitc.gov/tata/hts/*) and the petitioner for each petition included in this review. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the listed petitions have been found eligible for review by the TPSC and that such review will take place.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to any CNL waiver petition that has been accepted for the 2007 GSP Annual Review. Submissions should comply with 15 CFR Part 2007, except as modified below. All submissions should identify the subject article(s) in terms of the case number and eight digit HTSUS subheading number, if applicable, as shown in the ''List of CNL Waiver Petitions Accepted in the 2007 GSP Annual Review'' available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/GSP_2007_Annual_Review/Section_Index.html* [2007 GSP Review, List of CNL Waiver Petitions Accepted in the 2007 GSP Annual Review]

Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR requires electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single-copy transmissions in English, and including attachments, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type and three megabytes as sent as a digital file attached to an e-mail transmission. E-mail submissions should use the following subject line: ''2007 GSP Annual Review'' followed by the Case Number, the eight-digit HTSUS subheading number found in the ''List of CNL Waiver Petitions Accepted in the 2007 GSP Annual Review'' on the USTR Web site (for example, 2007–05 7202.99.20) and, as appropriate ''Written Comments'', ''Notice of Intent to Testify'', ''Pre-hearing brief'', ''Post-hearing brief'' or ''Comments on USITC Advice''. (For example, an e-mail subject line might read ''2007–05 7202.99.20 Written Comments''.) Documents must be submitted in English in one of the following formats: WordPerfect (.WPD), Adobe (.PDF), MSWord (.DOC), or text (.TXT) files. Documents cannot be submitted as electronic image files or contain embedded images, *e.g.*, ''.JPG'', ''.TIF'', ''.BMP'', or ''.GIF''. Supporting documentation submitted as spreadsheets are acceptable as Excel files, formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the characters ''P–''. The ''P– or ''BC–'' should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's name, organization name, address, telephone number and e-mail address. The e-mail address for these submissions is *FR0711@USTR.EOP.GOV.* (**Note:** the digit before the number 7 in the e-mail address is the number zero, not a letter.) Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street, NW, Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Notice of Public Hearing

The GSP Subcommittee of the TPSC will hold a hearing on March 4, 2008, for CNL waiver product petitions accepted for the 2007 GSP Annual Review, beginning at 9 a.m. at the Office of the U.S. Trade Representative, Rooms 1 and 2, 1724 F Street, NW., Washington, DC 20508. The hearing will be open to the public and a transcript of the hearing will be available for public inspection or can be purchased from the reporting company. No

electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the above ''Requirements for Submissions'', the name, address, telephone number, and facsimile number and e-mail address, if available, of the witness(es) representing their organization to Marideth Sandler, Executive Director of the GSP Program by 5 p.m., February 22, 2008. Requests to present oral testimony at the public hearing, along with a written hearing statement, must be received by 5 p.m., February 22, 2008. Oral testimony before the GSP Subcommittee will be limited to a five-minute presentation. If those testifying intend to submit a longer statement for the record, it must be in English and accompany the request to present oral testimony to be submitted by February 22, 2008. Post-hearing briefs or statements will be accepted if they conform with the ''Requirements for Submissions'' cited above and are submitted, in English, by 5 p.m., March 14, 2008. Parties not wishing to appear at the public hearing may submit pre-hearing briefs or statements, in English, by 5 p.m., February 22, 2008. Post-hearing written briefs or statements are to be submitted in English by 5 p.m. on March 14, 2008.

In accordance with sections 503(d)(1)(A) of the 1974 Act and the authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, the U.S. Trade Representative has requested that the USITC provide its advice on the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the waiver of the CNL for the specified GSP beneficiary countries, with respect to the articles that are specified in the ''List of CNL Waiver Petitions Accepted in the 2007 GSP Annual Review.'' Comments by interested persons on the USITC Report prepared as part of the product review should be submitted by 5 p.m., 10 calendar days after the date of USITC publication of its report. The e-mail address for these submissions is: *FR0711@USTR.EOP.GOV.*

Marideth Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, Office of the U.S. Trade Representative.

[FR Doc. E8–1524 Filed 1–28–08; 8:45 am]

BILLING CODE 3190–W8–P

POSTAL SERVICE

Changes in Domestic Mail Classifications

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule.

SUMMARY: This notice sets forth the changes to the Domestic Mail Classification Schedule to be implemented as a result of the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Regulatory Commission Approving Negotiated Service Agreement with Bank of America Corporation, Docket No. MC2007–1.

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

FOR FURTHER INFORMATION CONTACT: Matthew J. Connolly, (202) 268–8582.

SUPPLEMENTARY INFORMATION: On February 7, 2007, in accordance with 39 U.S.C. 3622(f) as amended by the Postal Accountability and Enhancement Act, Public Law 109–435, and former sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 101, *et seq.*), the United States Postal Service filed a request with the Postal Regulatory Commission (''PRC'') for a decision recommending a negotiated service agreement (''NSA'') with Bank of America Corporation. The PRC designated this filing as Docket No. MC2007–1. On October 3, 2007, pursuant to chapter 36 of title 39 of the U.S. Code, the PRC issued to the Governors of the Postal Service its Opinion and Recommended Approving the NSA with Bank of America Corporation.

Pursuant to former 39 U.S.C. 3625, the Governors of the United States Postal Service acted on the PRC's recommendation on December 17, 2007. In the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Regulatory Commission Approving Negotiated Service Agreement with Bank of America Corporation, Docket No. MC2007–1, the Governors of the Postal Service approved the recommended decision. In accordance with Resolution 07–7, the Board of Governors established an implementation date of April 1, 2008 on which the approved changes to the classification schedule for NSAs will take effect. The attachments to the Governors' Decision, setting forth the classification changes ordered into effect by the Governors, are set forth below.

In accordance with the Decision of the Governors and Resolution No. 07–7 of the Board of Governors, the Postal Service hereby gives notice that the classification changes set forth below will become effective at 12:01 a.m. on April 1, 2008.

Attachment A to the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Regulatory Commission Approving Negotiated Service Agreement With Bank of America Corporation, Docket No. MC2007–1

Approved Changes in Rate Schedules

The following represent the changes to the rate schedules recommended by the Postal Regulatory Commission and approved by the Governors of the Postal Service in Docket No. MC2007–1. The changes require the addition of five new rate schedules—630A, 630B, 630C, 630D, and 630E. The italicized text signifies that the text is new, and shall appear in addition to all other rate schedule text.

BANK OF AMERICA CORPORATION NSA RATE SCHEDULE 630A

(First-class mail improved mail processing performance)

Incremental improvement	*Rate incentive (per piece)*
0.1%	*$0.00032*
0.2	*0.00065*
0.3	*0.00097*
0.4	*0.00129*
0.5	*0.00162*
0.6	*0.00194*
0.7	*0.00227*
0.8	*0.00260*
0.9	*0.00292*
1.0	*0.00325*
1.1	*0.00358*
1.2	*0.00391*
1.3	*0.00424*
1.4	*0.00457*
1.5	*0.00483*
1.6	*0.00506*
1.7	*0.00529*
1.8	*0.00552*
1.9	*0.00575*

SCHEDULE 630A NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).

2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedule 221.

BANK OF AMERICA CORPORATION NSA RATE SCHEDULE 630B

[First-class mail reduced return rates]

Incremental improvement	Rate incentive schedule A (per piece)	Rate incentive schedule B (per piece)
10.0%	$0.00022	$0.00360
20.0	0.00037	0.00390
30.0	0.00053	0.00420
40.0	0.00068	0.00450
50.0	0.00083	0.00480
60.0	0.00099	0.00510
70.0	0.00114	0.00540
80.0	0.00130	0.00570
90.0	0.00145	0.00600

SCHEDULE 630B NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).

2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedule 221.

BANK OF AMERICA CORPORATION NSA RATE SCHEDULE 630C

[First-class mail reduced forwarding rates]

Incremental improvement	Rate incentive (per piece)
10%	$0.00013
20	0.00030
30	0.00047
40	0.00064
50	0.00081
60	0.00098
70	0.00116
80	0.00133
90	0.00150

SCHEDULE 630C NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).

2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedule 221.

BANK OF AMERICA CORPORATION NSA RATE SCHEDULE 630D

[Standard mail letters improved mail processing performance]

Incremental improvement	Rate incentive (per piece)
0.1%	$0.00024
0.2	0.00049
0.3	0.00073

BANK OF AMERICA CORPORATION NSA RATE SCHEDULE 630D—Continued

[Standard mail letters improved mail processing performance]

Incremental improvement	Rate incentive (per piece)
0.4	0.00097
0.5	0.00122
0.6	0.00146
0.7	0.00171
0.8	0.00195
0.9	0.00220
1.0	0.00244
1.1	0.00269
1.2	0.00294
1.3	0.00319
1.4	0.00343
1.5	0.00363
1.6	0.00379
1.7	0.00396
1.8	0.00419
1.9	0.00466

SCHEDULE 630D NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).

2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedules 321B or 322.

BANK OF AMERICA CORPORATION NSA RATE SCHEDULE 630E

(Standard mail letters reduced undeliverable-as-addressed rates)

Incremental improvement	Rate incentive (per piece)
10%	$0.00040
20	0.00060
30	0.00100
40	0.00110
50	0.00130
60	0.00150
70	0.00170
80	0.00170
90	0.00170

SCHEDULE 630E NOTES

1. All discounts will be paid in the form of a refund at the end of each Postal Fiscal Quarter in accordance with section 630.4 of the Domestic Mail Classification Schedule (DMCS).

2. Per-piece rate incentives deducted from per-piece rates for letter-rated items in Rate Schedule 321B or 322.

Attachment B to the Decision of the Governors of the United States Postal Service on the Opinion and Recommended Decision of the Postal Regulatory Commission Approving Negotiated Service Agreement With Bank of America Corporation, Docket No. MC2007–1

Approved Changes in the Domestic Mail Classification Schedule

The following material represents changes to the Domestic Mail Classification Schedule recommended by the Postal Regulatory Commission and approved by the Governors of the Postal Service in Docket No. MC2007–1. The italicized text signifies that the text is new, and shall appear in addition to all other Domestic Mail Classification Schedule text.

NEGOTIATED SERVICE AGREEMENTS CLASSIFICATION SCHEDULE

* * * * *

630 BANK OF AMERICA CORPORATION NEGOTIATED SERVICE AGREEMENT.

630.1 Definitions.

The following terms shall have the meanings ascribed to them in the Negotiated Service Agreement (NSA or Agreement) between Bank of America Corporation (Bank of America) and the United States Postal Service (Postal Service): Bank of America mail, Confirm service, Courtesy Reply Mail, eDropship, FAST (Facility Access and Shipment Tracking System), Four-State Barcode (OneCode), Letter-Rated Mail, OneCode ACS, PostalOne!®, Qualifying Permit Numbers, Schedule A First-Class Mail, Schedule B First-Class Mail, and Seamless Acceptance.

630.2 Eligible Mail.

630.21 Bank of America. Bank of America mail eligible for discounts under Rate Schedules 630A, 630B, 630C, 630D, and 630E is limited to letter-rated mail that (1) is entered by or on behalf of Bank of America or a subsidiary or affiliate, (2) relates to the business activities of Bank of America or a subsidiary or affiliate, and (3) complies with the machinability requirements specified in the Agreement. Such mail includes cooperative mailings and mail entered pursuant to marketing arrangements with other entities.

630.22 Other Mailers. Functionally equivalent NSAs, involving worksharing discounts for performance-based improvements resulting from (1) the implementation of Four-State Barcode, OneCode ACS, Confirm service, Seamless Acceptance, FAST, and eDropship, (2) the barcoding of Courtesy Reply Mail, Business Reply Mail, and

Qualified Business Reply Mail, and (3) the adoption of electronic Address Correction Service in lieu of physical returns for letter-rated First-Class Mail that would otherwise be eligible for Standard Mail rates, may be entered into with other customers, as specified by the Postal Service, and implemented pursuant to proceedings under chapter 36 of title 39 of the United States Code.

630.3 Operational Commitments of Bank of America.

630.31 Four-State Barcode. Bank of America will use the Four-State Barcode on all Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail or Standard Mail.

630.32 OneCode ACS. Bank of America will place OneCode ACS markings on all Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail and Standard Mail, subject to the conditions and exceptions set forth in the text of the NSA.

630.33 Waiver of Physical Return of Certain Letter-Rated Mailpieces. Bank of America will accept electronic information about certain kinds of undeliverable-as-addressed letter-rated mailpieces instead of their physical return, as specified in the text of the NSA.

630.34 Confirm Service. Bank of America will implement use of Confirm service in accordance with section 991. Bank of America will use Confirm service for all Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail and Standard Mail.

630.35 Seamless Acceptance. Bank of America will use seamless acceptance for Bank of America mail entered under a Qualifying Permit Number as letter-rated First-Class Mail and Standard Mail. Bank of America will use a Mail.dat file (or Web-services) in conjunction with Four-State Barcodes to enable the Postal Service to use performance-based verification procedures for mail entered by Bank of America, subject to the conditions and exceptions set forth in the text of the NSA.

630.36 FAST and eDropship. Bank of America will use the automated scheduling services provided to the FAST system through the PostalOne! electronic data exchange services to enter its letter-rated Standard Mail mailpieces with destination entry discounts, subject to the conditions and exceptions set forth in the text of the NSA.

630.37 Barcoding of Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail. Bank of America will implement use of the Four-State Barcode on all Courtesy Reply Mail, Business Reply Mail, and Qualified Business Reply Mail envelopes enclosed in its mail. All mailpieces will be machinable, automation compatible, and properly marked with a OneCode Four-State Barcode. This requirement is subject to certain conditions and exceptions as provided in the text of the NSA.

630.4 Discounts.

630.41 General Terms and Conditions. The Postal Service shall pay rate discounts in the form of refunds to Bank of America for improved address quality and mail processing in accordance with the text of the NSA. Discounts shall be calculated as adjustments to the rates of postage otherwise established by the DMM. Discounts shall be determined quarterly, over the life of the Agreement, based on Bank of America's actual mail volumes and address quality for each quarter just ended, subject to the conditions in the text of the NSA.

630.42 First-Class Mail Discounts.

630.421 Discounts for Improved Mail Processing. Eligible mail that is sent via First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221, less the discounts shown in Rate Schedule 630A for improved mail processing performance for letter-rated First-Class Mail mailpieces.

630.422 Discount Formula for Improved Mail Processing. The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630A:

a. The Postal Service will determine the total number of letter-rated First-Class Mail mailpieces of Bank of America mail that are read and accepted during their first pass through Postal Service mail sorting equipment during an applicable quarter.

b. The Postal Service will divide the number identified in section 630.422(a) above by the total number of letter-rated First-Class Mail mailpieces of Bank of America mail that receive a first pass through Postal Service mail sorting equipment during the same quarter.

c. The Postal Service will subtract the baseline value set forth in the agreement from the percentage obtained in section 630.422(b) to obtain the incremental improvement within the meaning of the table in Rate Schedule 630A.

630.423 Discounts for Reduced Return Rates. Eligible mail that is sent via First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221, less the discounts shown in Rate Schedule 630B for reduced return rates for letter-rated First-Class Mail mailpieces.

630.424 Discount Formula for Reduced Return Rates. The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630B:

a. The Postal Service will identify the number of undeliverable-as-addressed letter-rated First-Class Mail mailpieces of Bank of America mail that have been returned to the sender by the Postal Service, as determined through OneCode ACS, for the applicable quarter.

b. The Postal Service will divide the number identified in section 630.424(a) above by the total number of letter-rated First-Class Mail mailpieces of Bank of America mail for the applicable quarter.

c. The percentage obtained in section 630.424(b) will be subtracted from the applicable baseline undeliverable-as-addressed rate set forth in the Agreement, and the difference divided by that baseline undeliverable-as-addressed rate. The result, expressed as a percentage, will serve as the incremental improvement percentage used to determine the applicable rate incentive in Rate Schedule 630B.

630.425 Discount for Reduced Forwarding Rates. Eligible mail that is sent via First-Class Mail is subject to the otherwise applicable First-Class Mail postage in Rate Schedule 221, less the discounts shown in Rate Schedule 630C for reduced forwarding rates for letter-rated First-Class Mail mailpieces.

630.426 Discount Formula for Reduced Return Rates. The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630C:

a. The Postal Service will identify the number of undeliverable-as-addressed letter-rated First-Class Mail mailpieces of Bank of America mail that have been forwarded by the Postal Service, as determined through OneCode ACS, for the applicable quarter.

b. The Postal Service will divide the number identified in section 630.426(a) above by the total number of letter-rated First-Class Mail mailpieces of Bank of America mail for the applicable quarter.

c. The percentage obtained in section 630.426(b) will be subtracted from the baseline forwarding rate set forth in the Agreement, and the difference divided by that baseline forwarding rate. The result, expressed as a percentage, will serve as the incremental improvement percentage used to determine the applicable rate incentive in Rate Schedule 630C.

630.43 Standard Mail Discounts.

630.431 Discounts for Improved Mail Processing. Eligible mail that is sent via Standard Mail is subject to the otherwise applicable Standard Mail postage in Rate Schedules 321B or 322, less the discounts shown in Rate Schedule 630D for improved mail processing performance for letter-rated Standard Mail mailpieces.

630.432 Discount Formula for Improved Mail Processing. The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630D:

a. The Postal Service will determine the total number of letter-rated Standard Mail mailpieces of Bank of America mail that are read and accepted during their first pass through Postal Service mail sorting equipment during an applicable quarter.

b. The Postal Service will divide the number identified in section 630.432(a) by the total number of letter-rated Standard Mail mailpieces of Bank of America mail that receive a first pass through Postal Service mail sorting equipment during the same quarter.

c. The Postal Service will subtract the baseline value set forth in the Agreement from the percentage obtained in section 630.432(b) to obtain the incremental improvement percentage within the meaning of the table in Rate Schedule 630D.

630.433 Discounts for Reduced Undeliverable-As-Addressed Rates. Eligible mail that is sent via Standard Mail is subject to the otherwise applicable Standard Mail postage in Rate Schedules 321B or 322, less the discounts shown in Rate Schedule 630E for reduced undeliverable-as-addressed rates for letter-rated Standard Mail mailpieces.

630.434 Discount Formula for Reduced Undeliverable-As-Addressed Rates. The Postal Service will use the following formula to calculate the rate discounts Bank of America will receive pursuant to Rate Schedule 630E:

a. The Postal Service will identify the number of undeliverable-as-addressed letter-rated Standard Mail mailpieces of Bank of America mail that have been returned by the Postal Service, as determined through OneCode ACS, for the applicable quarter.

b. The Postal Service will divide the number identified in section 630.434(a) above by the total number of letter-rated Standard Mail mailpieces of Bank of America mail for the applicable quarter.

c. The percentage obtained in section 630.434(b) will be subtracted from the baseline undeliverable-as-addressed rate set forth in the Agreement, and the difference divided by that baseline undeliverable-as-addressed rate. The result, expressed as a percentage, will serve as the incremental improvement percentage used to determine the applicable rate incentive in Rate Schedule 630E.

630.5 Rounding Convention.

For the purposes of the Agreement, the following rounding convention will apply:

a. Numbers expressed as percentages will be rounded to the nearest tenth of a percent, and

b. Numbers expressed in dollars and cents will be rounded to the nearest thousandth of a cent.

630.6 Rates and Fees.

The rates applicable to this Agreement are set forth in the following Rate Schedules:

630A
630B
630C
630D
630E

630.7 Expiration.

The provisions of section 630 expire on April 1, 2011 at 12:01 a.m. (Eastern).

630.8 Precedence.

To the extent any provision of section 630 is inconsistent with any other provision of the Domestic Mail Classification Schedule, the former shall control.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E8–1471 Filed 1–28–08; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–4 and Form 19b–4; OMB Control No. 3235–0045; SEC File No. 270–38.

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'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for in the following rule: Rule 19b–4 (17 CFR 240.19b–4).

Section 19(b) of the Securities Exchange Act of 1934 (''Act'') (15 U.S.C. 78s(b)) requires each self-regulatory organization (''SRO'') to file with the Commission copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO. Rule 19b–4 implements the requirements of Section 19(b) by requiring the SROs to file their proposed rule changes on Form 19b–4 and by clarifying which actions taken by SROs are deemed proposed rule changes and so must be filed pursuant to Section 19(b).

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should be approved or if proceedings should be instituted to determine whether the proposed rule change should be disapproved.

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

Twenty-two respondents file an average total of 1,279 responses per year. Each response takes approximately 23.22 hours to complete. Thus, the estimated annual response burden is 29,698 hours. At an average cost per response of $6,150.31, the resultant total related cost of compliance for these respondents is $7,866,246 per year (1,279 responses × $6,150.31/response = $7,866,246).

Compliance with Rule 19b–4 is mandatory. Information received in response to Rule 19b–4 shall not be kept confidential; the information collected is public 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 control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) 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*. Comments

must be submitted within 30 days of this notice.

Dated: January 16, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1506 Filed 1–28–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57182; File No. SR–ISE–2007–109]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Rule 2213, Market Maker Trading Licenses

January 22, 2008.

I. Introduction

On November 14, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the limitation in ISE Rule 2213, ''Market Maker Trading Licenses,'' that a foreign exchange options primary market maker (''FXPMM'') in the Exchange's foreign currency options (''FX options'') cannot hold FXPMM trading licenses in more than four currency pairs. On December 13, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 21, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

ISE Rule 2213 currently provides that an FXPMM in the Exchange's FX options will be limited to holding no more than four FXPMM trading licenses across all currency pairs. The Exchange proposes to eliminate this restriction on the number of FXPMM trading licenses that a member can hold. The Exchange states that there is currently only one FXPMM trading in the four FX options presently listed on the Exchange.[4] As such, this FXPMM is precluded from serving as an FXPMM in any additional currency pairs. The Exchange represents that it intends to launch additional currency pairs in the near future and would like to allow the current FXPMM to participate in the auction for FXPMM trading licenses in these additional currency pairs.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[5] which 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.[6]

The Commission believes that eliminating the limitation in ISE Rule 2213 prohibiting a member from acting as an FXPMM in more than four currency pairs could assist the Exchange in listing additional currency pairs by allowing the only current FXPMM to participate in the auction for FXPMM trading licenses in these additional currency pairs. At the same time, the Commission believes that the existing process for obtaining FXPMM trading licenses in ISE Rule 2213(f) pursuant to a sealed bid auction should continue to ensure that trading licenses are awarded in a fair and reasonable manner and provide fair access to the exchange.[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–ISE–2007–109), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1480 Filed 1–28–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72808 (December 17, 2007), 72 FR 72808.

[4] The Exchange currently lists options on the euro, the British pound, the Japanese yen, and the Canadian dollar. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[5] 15 U.S.C. 78f(b)(5).

[6] 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).

[7] *See* ISE Rule 2213(f). *See also* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963, 17966 (April 10, 2007) (SR–ISE–2006–59) (noting that the Commission believed that the sealed bid auction for FXPMM trading licenses was reasonably calculated to award trading licenses in a fair and reasonable manner and provide fair access to the Exchange).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57185; File No. SR–ISE–2008–07]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

January 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2008, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] 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

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on five Premium Products.[5] The text of the proposed rule change is available at the ISE, at the Commission's Public Reference Room, and on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Premium Products'' is defined in the Schedule of Fees as the products enumerated therein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the iShares MSCI Mexico Index Fund (''EWW''),[6] FocusShares ISE-Revere Wal-Mart Supplier Index Fund (''WSI''),[7] FocusShares ISE-ndash;CMM Homeland Security Index Fund (''MYP''), FocusShares ISE SINdex Fund (''PUF''), and FocusShares ISE Homebuilders Index Fund (''SAW'').[8] The Exchange represents that EWW, MYP, PUF, SAW and WSI are eligible for options trading because they constitute ''Exchange-Traded Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on EWW, MYP, PUF, SAW and WSI.[9] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders [10] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[11] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.37 and $0.03 per contract, respectively.[12] Further, since options on EWW are multiply-listed, the Exchange's Payment for Order Flow fee shall apply only to this one product. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Further, as a matter of housekeeping, the Exchange proposes to remove FTZ from its Schedule of Fees.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(2) [17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[6] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''MSCI Mexico Index'' is a service mark of Morgan Stanley Capital International (''MSCI'') and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. EWW is not sponsored, endorsed, issued, sold or promoted by MSCI. BGI and MSCI have not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EWW; or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EWW or with making disclosures concerning options on EWW under any applicable federal or state laws, rules or regulations. BGI and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[7] The ISE-Revere Wal-Mart Supplier Index was jointly developed by ISE and Revere Data, LLC (''Revere''). Revere, an independent and privately owned provider of research data and investment analytics, provides specific research and support for the Wal-Mart Supplier Index. Wal-Mart® is a trademark of Wal-Mart Stores, Inc. The Wal-Mart Supplier Index (''WMX'') is not sponsored, endorsed, sold or promoted by Wal-Mart Stores, Inc., and Wal-Mart Stores, Inc. makes no representation regarding the advisability of investing in WMX. Wal-Mart Stores, Inc. has not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on exchange-traded funds based on WMX (''WMX ETF options''); or (ii) use any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of WMX ETF options or with making disclosures concerning WMX ETF options under any applicable federal or state laws, rules or regulations. Wal-Mart Stores, Inc. does not sponsor, endorse, or promote such activity by ISE, and is not affiliated in any manner with ISE.

[8] FocusShares is a registered trademark of FocusShares, LLC. ''ISE Homebuilders Index,'' ''ISE SINdex,'' ''ISE-CCM Homeland Security Index,'' and ''ISE-Revere Wal-Mart Supplier Index'' are trademarks of the ISE and have been licensed for use for certain purposes by FocusShares. All other trademarks and service marks are the property of their respective owners. FocusShares ISE Homebuilders Index Fund, FocusShares ISE SINdex Fund, FocusShares ISE-CCM Homeland Security Index Fund, and FocusShares ISE-Revere Wal-Mart Supplier Index Fund are not sponsored, endorsed, issued, sold or promoted by ISE.

[9] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 per contract side and $0.15 per contract side, respectively. *See* Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR–ISE–2007–55). Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, on January 17, 2008.

[10] ''Public Customer Order'' is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. ''Public Customer'' is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

[11] The execution fee is currently between $0.21 and $0.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $0.03 per contract side.

[12] The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.16 and $0.03 per contract, respectively.

[13] FTZ was recently delisted and no longer trades on the Exchange.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 17 CFR 19b–4(f)(2).

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2008–07 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–07. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–07 and should be submitted on or before February 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1482 Filed 1–28–08; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57175; File No. SR–NASDAQ–2008–006)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Recipients of Certain Risk Disclosures

January 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by Nasdaq. Nasdaq filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

Nasdaq proposes to amend Rule 4631 to clarify to whom members must provide disclosures pursuant to the Rule. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available at *http://nasdaq.complinet.com,* the principal office of Nasdaq, and 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, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend Rule 4631, which covers the disclosures required of members when accepting certain orders for trades outside the regular market session, to clarify to whom members must provide these disclosures. Rule 4631 requires members to provide certain risk disclosures to non-members prior to accepting orders for the pre- or post-market sessions. The term ''non-member'' may be interpreted to include a broker-dealer who is not a member of Nasdaq. In the approval order for the Rule,[5] however, the discussion of Nasdaq's purpose for Rule 4631 is framed in terms of disclosures to ''non-member customers.'' Nasdaq Rule 0120(g) defines the term ''customer'' to exclude a broker or dealer.[6] The differing terminology used in the Rule and in the approval order has caused some confusion among members.

Nasdaq notes that, as currently written, Rule 4631 could be interpreted to require members to make the risk disclosures to non-member broker-dealers, but not to member broker-dealers. Nasdaq believes that such a technical distinction is not meaningful nor was it Nasdaq's intention to make such a distinction when proposing the Rule. By clarifying that the Rule applies to members' disclosures to customers, as defined by Rule 0120(g), Nasdaq would avoid further member confusion surrounding the reading of the Rule and its associated approval order, while remaining consistent with the rule's intent.

Accordingly, Nasdaq believes it is necessary to amend Rule 4631 to make clear that the disclosures required by the Rule apply to members when accepting orders from customers, not ''non-members.''

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[8] in particular, in that the proposal enables Nasdaq to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by

[5] Securities Exchange Act Release No. 56985 (December 18, 2007), 72 FR 73388 (December 27, 2007) (SR–NASDAQ–2007–098).

[6] Rule 0120(g) states: The term ''customer'' shall not include a broker or dealer.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(1) and (b)(5).

members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and 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. Nasdaq believes that the clarification of Rule 4631 is needed to avoid further confusion surrounding its applicability. Currently, members may be interpreting the Rule inconsistently, thus providing disclosures to parties that were not contemplated as requiring the protections of the Rule. Nasdaq believes that the proposed amendment will ensure that members are aware of their obligations under the rule and thus foster consistent member compliance.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

Nasdaq has requested that the Commission waive the 30-day pre-operative period. The Commission believes that conforming the language of the Rule to Nasdaq's intent in establishing it is consistent with the protection of investors and the public interest. The Rule was designed to ensure that customers receive appropriate disclosures of the risks of trading outside of regular trading hours, not non-member broker-dealers. The Commission hereby grants Nasdaq's request and designates the proposal as operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2008–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–006. 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 such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2008–006 and should be submitted on or before February 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1463 Filed 1–28–08; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission has determined to waive the five-day pre-filing period in this case.

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57183; File No. SR–NASDAQ–2008–007]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of Certain Fee Changes

January 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by Nasdaq. Nasdaq has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

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

Nasdaq proposes to delay the implementation date of certain pricing changes made by SR–NASDAQ–2008–001 [5] that were effective upon filing. There is no text to the proposed rule change. Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

In SR–NASDAQ–2008–001, Nasdaq made a number of changes to its pricing schedule for transaction execution and routing. In that filing, which was effective upon filing, all of the pricing changes were designated to take effect on January 2, 2008. Based on member requests to provide additional time to adjust to one aspect of the pricing change, Nasdaq is delaying implementation of the $0.0001 reduction in the liquidity provider rebate applicable to quotes/orders that are designated for posting to the Nasdaq book without being displayed to other market participants. Thus, for the month of January, the liquidity provider credit for Nasdaq-listed securities priced at $1 or more will be $0.0025 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided; $0.0022 per share executed for members with an average daily volume of more than 20 million shares of liquidity provided; and $0.002 per share executed for other members. The liquidity provider credit for securities listed on the New York Stock Exchange (''NYSE'') priced at $1 or more per share will be $0.0027 per share executed for members with an average daily volume through the Nasdaq Market Center in all securities during the month of more than 35 million shares of liquidity provided; $0.0023 per share executed for members with an average daily volume of more than 20 million shares of liquidity provided; and $0.002 per share executed for other members. For securities listed on exchanges other than NYSE and Nasdaq, the rebate will be $0.004 per share executed for all members trading certain designated ''Low-Volume Securities.'' For other securities listed on exchanges other than Nasdaq and NYSE, the rebate will be $0.0025 per share executed for members with an average daily volume of more than 35 million shares of liquidity provided; $0.0022 per executed for members with an average daily volume of more than 20 million shares of liquidity provided; and $0.002 per share executed for other members. Effective February 1, 2008, the reduction of each of these amounts by $0.0001 per share executed for quotes/orders that do not display liquidity will be implemented. All other changes made by SR–NASDAQ–2008–001 have been implemented effective January 2, 2008. Because Nasdaq prepares bills for order execution and routing at the end of a month, the delayed implementation will be fully reflected in the bills for January 2008.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The changes will delay a decrease in liquidity provider rebates during the month of January 2008 for all members that provide liquidity through non-displayed quotes/orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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, as amended.

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 pursuant to Section 19(b)(3)(A)(i) of the Act [8] and Rule 19b–4(f)(1) [9] thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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*. Please include File Number SR–NASDAQ–2008–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–007. 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

[5] *See* Securities Exchange Act Release No. 57147 (January 14, 2008), 73 FR 3788 (January 22, 2008) (SR–NASDAQ–2008–001).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2008–007 and should be submitted on or before February 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1464 Filed 1–28–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57189; File No. SR–NASDAQ–2007–079]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Units of the United States Heating Oil Fund, LP and the United States Gasoline Fund, LP Pursuant to Unlisted Trading Privileges

January 23, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' 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. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade units (''Units'') of the United States Heating Oil Fund, LP (''USHO'') and the United States Gasoline Fund, LP (''USG'') (collectively, the ''Partnerships'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available at Nasdaq's principal office, the Commission's Public Reference Room, and *http://www.nasdaq.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, Nasdaq 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 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

Nasdaq proposes to trade the Units of USHO and USG under Nasdaq Rule 4630 (Trading in Commodity-Related Securities)[3] pursuant to UTP. The respective Units represent an ownership of a fractional undivided beneficial interest in the net assets of each of USHO and USG.[4] The net assets of each of USHO and USG will consist of investments in futures contracts based on heating oil, gasoline, crude oil, and other petroleum-based fuels and natural gas that are traded on the New York Mercantile Exchange (''NYMEX''), Intercontinental Exchange (''ICE Futures''), or other U.S. and foreign exchanges (collectively, ''Futures Contracts''). The Commission has approved the listing and trading of the Units on the American Stock Exchange LLC (''Amex'').[5]

Detailed information regarding the Partnerships; the investment strategies, objectives, and policies of the Partnerships; the petroleum-based fuels market, the structure, management, and regulation of the Partnerships; accountability levels and position limits; the Indicative Partnership Value (as defined herein); the manner in which the Units will be offered and sold; calculation methodologies; and arbitrage can be found in the Amex Proposal and in the respective Registration Statements regarding the offering of the Units filed with the Commission under the Securities Act of 1933.[6]

The daily settlement prices for the NYMEX-traded Futures Contracts are publicly available on the NYMEX Web site at *http://www.nymex.com.* In addition, various market data vendors and news publications publish futures prices and related data, including quotation and last-sale information for the Futures Contracts. NYMEX also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for the Futures Contracts are available on the NYMEX Web site and the ICE Futures Web site at *http://www.icefutures.com.*

Amex will disseminate through the facilities of the Consolidated Tape Association (''CTA'') an updated Indicative Partnership Value (''Indicative Partnership Value''). The Indicative Partnership Value for each Partnership will be disseminated on a per-Unit basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time (''ET''). In addition, shortly after 4 p.m. ET on each business day, the Administrator (as defined herein), Amex, and the General Partner, Victoria Bay Asset Management, LLC, will disseminate the Basket Amount[7] for orders placed during that day, together

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ Rule 4630(c)(1) defines a Commodity-Related Security as a security that is issued by a trust, partnership, commodity pool, or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.

[4] Each Partnership is a commodity pool that will issue Units that may be purchased and sold on the Exchange.

[5] *See* Securities Exchange Act Release No. 57188 (January 23, 2008) (SR–Amex–2007–70) (approving Amex's proposal to list and trade the Units of the Partnerships). *See also* Securities Exchange Act Release No. 5 7042 (December 26, 2007), 73 FR 514 (January 3, 2008) (SR–Amex–2007–70) (providing notice of Amex's proposal to list and trade the Units of the Partnerships) (''Amex Proposal'').

[6] *See* USHO's Registration Statement on Form S–1 filed on April 19, 2007 (File No. 333–142211) and USG's Registration Statement on Form S–1 filed on April 18, 2007 (File No. 333–142206).

[7] *See infra* note 14.

with the net asset value (''NAV'') for the Units.[8]

Quotations and last-sale information regarding the Units will be disseminated through the facilities of the CTA and the Consolidated Quote High Speed Lines.[9] Amex intends to disseminate for each Partnership on a daily basis information with respect to the Indicative Partnership Value, recent NAV, Units outstanding, and the Basket Amount. Amex will also make available on its Web site daily trading volume and closing prices of the Units and the following information: (1) The prior business day's NAV and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (''Bid-Ask price'');[10] (3) calculation of the premium or discount of such price against such NAV; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the SEC or required by the CFTC for each of the Partnerships; and (6) other applicable quantitative information.

USHO's and USG's total portfolio composition will be disclosed, each business day that Amex is open for trading, on their Web sites at *http://www.unitedstatesheatingoilfund.com* and *http://www.unitedstatesgasolinefund.com,* respectively. USHO's Web site disclosure of portfolio holdings will be made available daily and will include, as applicable, the name and value of each Heating Oil Interest,[11] the specific types and characteristics of such Heating Oil Interests, Treasuries,[12] and the amount of cash and cash equivalents held in the portfolio of USHO. USG's Web site disclosure of portfolio holdings will be made available daily and will include, as applicable, the name and value of each Gasoline Interest,[13] the specific types and characteristics of such Gasoline Interests, Treasuries, and the amount of cash and cash equivalents held in the portfolio of USG. The public Web site disclosure of the portfolio composition of each of USHO and USG will coincide with the disclosure by Brown Brothers Harriman & Co. (the ''Administrator'') of the NAV for the Units and the Basket Amount[14] (for orders placed during the day) for each Partnership on each business day.

The Exchange will halt trading in the Units under the conditions specified in Nasdaq Rules 4120 and 4121. In addition, the Exchange represents that it will halt trading in the Units if the listing market halts trading in, or delists the Units and that the conditions for a halt include a regulatory halt by the listing market.

Nasdaq deems the Units to be equity securities, thus rendering trading in the Units subject to its existing rules governing the trading of equity securities. Nasdaq represents that the Units will trade on the Exchange during all three of its trading sessions.[15]

The Exchange believes that its surveillance procedures are adequate to address any concerns regarding the trading of the Units. Trading in the Units through Nasdaq facilities would be subject to the surveillance procedures of the Financial Industry Regulatory Authority, (''FINRA'') for equity securities, in general, and exchange-traded funds, in particular.[16] In addition, Nasdaq is able to obtain information regarding trading in the Units and the underlying Futures Contracts through its members in connection with the proprietary or customer trades that such members effect on any relevant market. The Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliate members of ISG. Nasdaq also states is party to information sharing agreements with NYMEX and ICE Futures for the purpose of providing information in connection with the trading in Futures Contracts traded on the those markets. Nasdaq states to the extent that a Partnership invests in Heating Oil Interests or Gasoline Interests that are traded on other exchanges, it will enter into information sharing agreements with those other exchanges.

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Units. Specifically, the Information Circular will discuss the following: (1) The risks inherent with trading the Units during the Pre- and Post-Market Sessions when the updated Indicative Partnership Value is not calculated and disseminated;[17] (2) the procedures for purchases and redemptions of Units (and that Units are not individually redeemable); (3) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Units to customers; (4) how information regarding the Indicative Partnership Value is disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action, or interpretive relief granted by the Commission from the Act or any rules thereunder. In addition, the Information Circular will reference that each Partnership is subject to various fees and expenses; there is no regulated source of last-sale information regarding physical commodities; the Commission has no jurisdiction over the trading of heating oil, gasoline, crude oil, natural gas, or other petroleum-based fuels; and

[8] E-mail from Sean Bennett, Assistant General Counsel, Nasdaq, to Rebekah Goshorn, Staff Attorney, Division of Trading and Markets, Commission, dated January 8, 2008 (''NASDAQ Confirmation''). Amex will obtain a representation from each Partnership that the respective NAV per Unit will be calculated daily and made available to all market participants at the same time. *See* Amex Proposal, *supra* note 5, 73 FR at 519.

[9] *See* Nasdaq Confirmation, *supra* note 8.

[10] The Bid-Ask Price of Units is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[11] Heating Oil Interests are defined as investments in Futures Contracts and other heating oil-related investments, such as cash-settled options on Futures Contracts, forward contracts for heating oil, and over-the-counter (''OTC'') contracts that are based on the price of heating oil, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing. *See* Amex Proposal, *supra* note 4, 73 FR at 514.

[12] Treasuries are defined as short-term obligations of the United States of two years or less. *See id.*

[13] Gasoline Interests are defined as investments in Futures Contracts and other gasoline-related investments, such as cash-settled options on Futures Contracts, forward contracts for gasoline, and OTC transactions that are based on the price of gasoline, oil, and other petroleum-based fuels, Futures Contracts, and indices based on the foregoing. *See id.*

[14] *See id.,* 73 FR at 519 (defining Basket Amount as the amount of Treasuries and/or cash equal to the NAV per Unit *times* 100,000 Units required for the purchase of a basket of Units).

[15] *See* Nasdaq Confirmation, *supra* note 8. Nasdaq defines the Pre-Market Session as the trading session that begins at 7 a.m. and continues until 9:30 a.m. The Post-Market Session means the trading session that begins at 4 p.m. or 4:15 p.m. and continues until 8 p.m. The Regular Market Session means the trading session from 9:30 a.m. until 4 p.m. or 4:15 p.m. *See* Nasdaq Rule 4120(b)(4). *See also* Nasdaq Rule 4630(a) (providing that a Commodity-Related Security approved for trading under this rule is eligible for trading during all market sessions if members comply with Nasdaq Rule 4631 when accepting Commodity-Related Security orders for execution in the Pre-Market Session or Post-Market Session. *See infra* note 17 and accompanying text.

[16] FINRA surveils trading pursuant to a regulatory services agreement. Nasdaq states that it is responsible for FINRA's performance under this regulatory services agreement.

[17] *See* Nasdaq Confirmation, *supra* note 8. *See also* Nasdaq Rule 4631 (requiring Exchange members to provide certain customer disclosures, including the risks inherent with trading the Units during the Pre- and Post-Market Sessions when the updated Indicative Partnership Value is not calculated and disseminated).

the CFTC has regulatory jurisdiction over the trading of heating oil-based and gasoline-based futures contracts and related options. The Information Circular will also disclose the trading hours of the Units of each Partnership and that the NAV for the Units will be calculated after 4 p.m. ET each trading day.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with section 6(b) of the Act,[18] in general, and section 6(b)(5) of the Act,[19] 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. In addition, Nasdaq believes that the proposal is consistent with Rule 12f–5 under the Act[20] because it deems the Units to be equity securities, thus rendering trading in the Units subject to Nasdaq's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–079 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–NASDAQ–2007–079. 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 offices 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–NASDAQ–2007–079 and should be submitted on or before February 19, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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.[21] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[22] which requires that an exchange have rules designed, among other things, 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 Units.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Act,[23] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[24] The Commission notes that it approved the original listing and trading of the Units on Amex.[25] The Commission finds that the proposal is consistent with Rule 12f–5 under the Act,[26] 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 Units to be equity securities, thus rendering trading in the Units 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,[27] 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 and last-sale information regarding the Units will be disseminated through the facilities of the CTA and Consolidated Quote High Speed Lines. The daily settlement prices for the Futures Contracts are publicly available on various Web sites, and market data vendors and news publications that publish futures prices and related data, including quotation and last-sale information for the Futures Contracts. Amex will disseminate through the facilities of the CTA an updated Indicative Partnership Value on a per-

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 240.12f–5.

[21] 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).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78*l*(f).

[24] Section 12(a) of the Act, 15 U.S.C. 78*l*(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.

[25] *See supra* note 5.

[26] 17 CFR 240.12f–5.

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

Unit basis at least every 15 seconds during regular Amex trading hours. Amex intends to disseminate for each Partnership on a daily basis, information with respect to the Indicative Partnership Value, information related to the NAV, number of Units outstanding, the Basket Amount, and daily trading volumes and closing prices of the Units. Finally, USHO's and USG's total portfolio composition will be disclosed, each business day that the Amex is open for trading, on their respective Web sites.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. The Exchange will halt trading in the Units under the conditions prescribed in Nasdaq Rules 4120 and 4121. In addition, the Exchange represents that it will halt trading in the Units if the listing market halts trading in the Units.

The Commission notes that, if the Units should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Units 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 address any concerns associated with the trading of the Units on a UTP basis.

(2) The Exchange would inform its members in an Information Circular of the special characteristics and risks associated with trading the Units, including risks inherent with trading the Units during the Pre- and Post-Market Sessions when the updated Indicative Partnership Value is not calculated and disseminated, and suitability recommendation requirements.

(3) The Exchange would require its members to deliver a prospectus or product description to investors purchasing Units prior to or concurrently with a transaction in such Units and will note this prospectus delivery requirement in the Information Circular.

This approval order is based on the Exchange's 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 above, the Commission previously approved the original listing and trading of the Units on Amex.[28] The Commission presently is not aware of any regulatory issue that should cause it to revisit this finding or would preclude the trading of the Units on the Exchange pursuant to UTP. Accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such Units.

[28] *See supra* note 5.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASDAQ–2007–079) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1483 Filed 1–28–08; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57184; File No. SR–NYSE–2008–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to NYSE Rule 103A (Specialist Stock Reallocation and Member Education and Performance) and NYSE Rule 103B (Specialist Stock Allocation)

January 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to 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 Exchange proposes to extend, to March 31, 2008, the moratorium on the administration of the Specialist Performance Evaluation Questionnaire (''SPEQ'') pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B (''Moratorium'') that was implemented on June 8, 2007 and terminated on December 31, 2007. In addition, the Exchange proposes to continue to suspend the use of SuperDot turnaround for orders received and the use of responses to administrative messages as objective measures in the assessment of specialist performance during the Moratorium. The Exchange further proposes that the SPEQ and Order Reports/Administrative Responses continue to be removed from the criteria used to commence a specialist performance improvement action during the Moratorium. The Exchange requests that the effective date of such extension be retroactive to December 31, 2007.

The text of the proposed rule changes is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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 extend, to March 31, 2008, the Moratorium on the administration of the SPEQ pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B, which was implemented on June 8, 2007 and terminated on December 31, 2007.[3] The Exchange requests that the effective date of such extension be retroactive to December 31, 2007.

In addition, the Exchange proposes that the use of SuperDot turnaround for orders received and responses to administrative messages continue to be removed from the objective measures used in the assessment of specialist performance pursuant to Exchange Rule 103B or as criteria used to commence specialist performance improvement

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55852 (June 4, 2007), 72 FR 31868 (June 8, 2007) (SR–NYSE–2007–47) (''Original Request'').

action pursuant to Exchange Rule 103A during the Moratorium.

SPEQ

Prior to June 2007, pursuant to Exchange Rule 103A, on a quarterly basis, the Exchange distributed a twenty question survey known as the SPEQ to eligible Floor brokers [4] to evaluate specialist performance during the quarter immediately prior to the distribution of the SPEQ. Initially, this subjective feedback provided critical information to assist the Exchange in maintaining the quality of the NYSE market.

However, the Exchange believed that the SPEQ no longer adequately allowed a Floor broker to assess the electronic interaction between the specialist and the Floor broker. The Hybrid Market provided Floor brokers and specialists with electronic trading tools that have resulted in less personal and verbal contact between Floor brokers and specialists. Currently, the majority of transactions executed on the Exchange are done through electronic executions.

In addition, the dramatic increase in transparency with respect to the Display Book through, among other things, Exchange initiatives like Exchange OPENBOOK™ [5] (''OPENBOOK'') has decreased the need for the Floor broker to obtain market information verbally from the specialist. This increased transparency gives all market participants, both on and off the Floor, a greater ability to see and react to market changes.

The questions on the SPEQ did not take into account the operation of the electronic tools available in the Hybrid Market. The SPEQ did not provide Floor brokers with a means to evaluate specialist performance under the current market model. As a result of the more electronic interaction between Floor brokers and specialists, Floor brokers were unable to assess specialist performance using the SPEQ.

The questions posed to the Floor brokers on the SPEQ required Floor brokers to opine on the specialists' ability to offer single price executions and specialists' ability to provide notification to Floor brokers of market changes in particular stocks. In the current Hybrid Market, specialists are unable to offer single price executions and the relative speed of executions makes it virtually impossible for specialists to notify brokers of changes in a particular security.

Given the above, the SPEQ no longer served as a meaningful measure of specialist performance.

Objective Measures

The Exchange further requests that during the extension of the Moratorium, allocations of newly listed securities on the Exchange continue to be based on the objective measures identified in Exchange Rule 103B [6] with the exception of SuperDot turnaround for orders received and response to administrative messages.

As explained in the Original Request, SuperDot turnaround for orders received and response to administrative messages no longer provide meaningful objective standards to evaluate specialist performance in the Hybrid Market. Specifically, in the more electronic Hybrid Market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed by Exchange systems. As such, SuperDot turnaround no longer provided a meaningful objective measure of a specialist's performance.

Furthermore, in the Hybrid Market the Exchange systems automatically respond to the majority of the administrative messages. Today, there are two administrative messages that require a manual response from specialists. These are messages that require the specialist to provide status information on market orders and stop orders. With regard to requests for the status of stop orders, the specialists are no longer capable of providing this information. In December 2006, following Commission approval,[7] the Exchange changed its stop order handling process. Stop orders are no longer visible to the part of the NYSE Display Book® that the specialist ''sees.'' When a transaction on the Exchange results in the election of a stop order that had been received prior to such transaction, the elected stop order is sent as a market order [8] to the Display Book and the specialist's system employing algorithms where it is handled in the same way as any other market order. The specialist therefore is unable to provide any information regarding the status of stop orders.

Market orders are eligible to receive immediate and automatic execution on the Exchange. The immediate and automatic execution of market orders eliminates the need for the specialists to respond to the administrative request for the status of market orders. In practice, a customer that submits a market order will likely receive a report of execution before the administrative message requesting the status of the market order has been printed and read by the specialist.

This change has had a minimal impact on Exchange customers. In the past few years, the average number of administrative messages received on a daily basis has steadily declined. The Exchange believes that immediate and automatic execution of orders will virtually eliminate administrative messages that require a manual response from a specialist. As a result, a specialist's ability to respond to administrative messages no longer provides a meaningful measure of specialists' performance during the Moratorium.

Given the above, the Exchange seeks to continue suspension of the use of both measures as criteria used to assess specialists' performance during the extension of the Moratorium.

Performance Improvement Actions

Similarly, during the extension of the Moratorium, the Exchange seeks to continue suspending the use of the SPEQ and Order Reports/Administrative Reports as criteria for the implementation of a performance improvement action pursuant to Exchange Rule 103A. Exchange Rule 103A(b) provides that:

[4] The Exchange believed that conscientious participation in the SPEQ process was a critical element in the Exchange's program for evaluating the overall performance of its specialists. All eligible Floor brokers are required to participate in the process and evaluate from one to three specialist units each quarter. Floor brokers were selected to participate in the SPEQ process based on broker badge data submitted in accordance with audit trail requirements. Brokers who intentionally failed or refused to participate in the SPEQ process were potentially subject to disciplinary action, including the imposition of a summary fine pursuant to Exchange Rule 476A.

[5] OPENBOOK Online Database is an Exchange online service that allows subscribers to view the contents of the specialist book for any stock at any given point in the day, or over a period of time. Results are returned in an Excel spreadsheet. OPENBOOK Online Database is a historical database with data stored online for a 12-month period.

[6] Pursuant to Exchange Rule 103B, specialist dealer performance is measured in terms of participation (TTV); stabilization; capital utilization, which is the degree to which the specialist unit uses its own capital in relation to the total dollar value of trading in the unit's stocks; and near neighbor analysis, which is a measure of specialist performance and market quality comparing performance in a stock to performance of stocks that have similar market characteristics. Additional objective measures pursuant to Exchange Rule 103B are those measures included in Exchange Rule 103A which are: (a) Timeliness of regular openings; (b) promptness in seeking Floor official approval of a non-regulatory delayed opening; (c) timeliness of DOT turnaround; and (d) response to administrative messages.

[7] *See* Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE–2006–65).

[8] As used herein, the term ''market order'' refers to market orders that are not designated as ''auction market orders.''

The Market Performance Committee shall initiate a Performance Improvement Action (except in highly unusual or extenuating circumstances, involving factors beyond the control of a particular specialist unit, as determined by formal vote of the Committee) in any case where a specialist unit's performance falls below such standards as are specified in the Supplementary Material to this rule. The objective of a Performance Improvement Action shall be to improve a specialist unit's performance where the unit has exhibited one or more significant weaknesses, or has exhibited an overall pattern of weak performance that indicates the need for general improvement.

Prior to June 2007, the SPEQ and Order Reports/Administrative Reports were two criteria included in the standards specified in Exchange Rule 103A Supplementary Material. Given that SPEQ and Order Reports/Administrative Reports no longer provided significant objective measures of specialists' performance in the Hybrid Market, the Exchange sought to suspend the use of both measures as criteria for the implementation of a performance improvement action during the Moratorium. Through this filing, the Exchange seeks to continue this suspension for the duration of the Moratorium.

Creation of a New Process

Currently, the Exchange has completed its assessment of the specialists' function in its current market and identified objective standards it currently believes will provide a means to accurately assess and measure the specialists' performance of its market-making function. Using newly identified objective measures, the Exchange will formally submit a proposal to the Commission no later than February 1, 2008 to amend Exchange rules that govern the allocation of securities to specialist firms and other related rules.

The Exchange believes that the use of objective performance measures will provide for a more significant comparison of specialist performance. It is anticipated that the use of more objective and detailed measures will promote healthy competition between specialist firms and ultimately result in better market-making for Exchange customers.

Conclusion

The Exchange therefore requests to extend the Moratorium on the administration of the SPEQ pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B until March 31, 2008. In addition the Exchange proposes to continue to suspend the use of SuperDot turnaround for orders received and the use of responses to administrative messages as objective measures in the assessment of specialist performance during the Moratorium. The Exchange further proposes that the SPEQ and Order Reports/Administrative Responses continue to be removed from the criteria used to commence a specialist performance improvement action during the Moratorium. The Exchange requests that the effective date of the requested extension be retroactive to December 31, 2007.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an 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)[10] 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.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–02. 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 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–NYSE–2008–02 and should be submitted on or before February 19, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

After careful review, 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.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 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).

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 by extending the Moratorium the Exchange can discontinue relying on factors that no longer provide meaningful objective measures of a specialist's performance in the Hybrid Market environment.

Furthermore, the Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing. By extending the Moratorium from December 31, 2007 until March 31, 2008, the Exchange should have sufficient time to allow it to propose changes to its allocation policy that reflects its current market structure. The Commission notes that the Exchange advised that it expects to submit a proposal to amend its rules governing the allocation of securities to specialist firms and related rules by February 1, 2008. In addition, the Commission believes that allowing the extension of the Moratorium to take effect retroactively as of December 31, 2007 will allow the Moratorium to occur uninterrupted until March 31, 2008.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–2008–02) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1481 Filed 1–28–08; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 31, 2008.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Barbara Brannan, Special Assistant, Office of Surety Bond Guarantee Program, Small Business Administration, 409 3rd Street SW., 8th Floor, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Special Assistant, Office of Surety Bond Guarantee Program, 202–205–6545 *barbara.brannan@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''Surety Bond Guarantee Assistance''.

Description of Respondents: Surety Bond Companies.

Form No's.: 990, 991, 994, 994B, 994F, and 994H.

Annual Responses: 31,113.

Annual Burden: 2,012.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., 8th Floor, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, Office of Financial Assistance, 202–205–7528 *sandra.johnston@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

Title: ''Settlement Sheet''.

Description of Respondents: Lenders requesting SBA to provide the Agency with breakdown of payments.

Form No's.: 1050.

Annual Responses: 36,000.

Annual Burden: 27,000.

Title: ''Lenders Transcript of Account''.

Description of Respondents: SBA Lenders.

Form No's.: 1149.

Annual Responses: 3,600.

Annual Burden: 3,600.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 08–352 Filed 1–28–08; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing, Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing.

The basis for waiver is that no small business manufacturers are supplying this class of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestics manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: This waiver is effective February 13, 2008.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or my e-mail at *Edith.Butler@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be

considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA received a request on October 23, 2007, to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing, Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing, North American Industry Classification System (NAICS) code 334517 product number 6525. In response, On November 15, 2007, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing, Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing. SBA explained in the notice that is was soliciting comments and sources of small business manufacturers of this class of products.

In response to this notice, two (2) comments were received from interested parties. However, none of the interested parties are small business manufacturers of Irradiation Apparatus Manufacturing, Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing.

Dated: January 23, 2008.

Arthur E. Collins, Jr.,

Director for Government Contracting.

[FR Doc. E8–1493 Filed 1–28–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2008–0006]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 27, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 28, 2008.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington DC, 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–0006.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ferroni, 202–366–3233, Office of Natural and Human Environment (HEPN–20), Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 6 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Noise Barriers Inventory Request.

Background: The Federal-aid highway program has always been based on a strong State-Federal partnership. At the core of that partnership is a philosophy of trust and flexibility, and a belief that the States are in the best position to make investment decisions that are based on the needs and priorities of their citizens. The FHWA noise regulations give each State highway agency flexibility in determining the reasonableness and feasibility of noise abatement and, thus, in balancing the benefits of noise abatement against the overall adverse social, economic, and environmental effects and costs of the noise abatement measures. The State highway agencies base their determination on the interest of the overall public good, keeping in mind all the elements of the highway program.

The flexibility in noise abatement decisionmaking is reflected by data indicating that not all States have built noise barriers. Through the end of 2004, 45 State Departments of Transportation (SDOT) and the Commonwealth of Puerto Rico have constructed over 2,205 linear miles of barriers at a cost of over $2.6 billion ($3.4 billion in 2004 dollars). Five States and the District of Columbia have not constructed noise barriers. Ten State highway agencies account for approximately 64 percent of total barrier length and 72 percent of total barrier cost. The previously distributed listing can be found at *http://www.fhwa.dot.gov/environment/noise/barrier/summary.htm.* This listing continues to be extremely useful in the management of the highway traffic noise program, in our technical assistance efforts for State highway agencies, and in responding to inquiries from congressional sources, Federal, State, and local agencies, and the general public. An updated listing of noise barriers will be distributed nationally for use in the highway traffic noise program. This collection request is for all noise barriers constructed by December 31, 2007. This would include all funding sources and material types. Although the collection concentrates on the 2005, 2006, and 2007 calendar years, a State highway agency may, after review of the ''Summary of Noise Barriers Constructed by December 31, 2004'' document, delete, modify, or add information to any calendar year.

Respondents: Each of the 50 SDOTs, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Average Burden per Response: It is estimated that on average it would take 8 hours to respond to this request. The actual response time will be dependent on the number of noise barriers constructed, the availability of

this information, and the collection method. For the SDOT that did not construct noise barriers within the time period, there is no burden.

Estimated Total Annual Burden: It is estimated that the total annual burden is 139 hours annually.

Electronic Access: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 22, 2008.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E8–1494 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed Highway Project in California

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). These actions relate to a proposed Highway project on Interstate 5 at the Cosumnes River Boulevard Interchange from South of the Pocket/Meadowview Road Interchange and North of Laguna Blvd. interchange between Post Mile 14.3 to 15.5 in Sacramento. County, State of California. These actions grant approval for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 28, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, 650 Capitol Mall, #4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5065, *cesar.perez@fhwa.dot.gov,* or John Webb, Supervisory Environmental Planner, California Department of Transportation, 2389 Gateway Oaks Dr., Sacramento, CA 95833, weekdays between 8 a.m. and 4:30 p.m., (916) 274–0588, *John_Webb@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California. This project proposes to construct a new Cosumnes River Boulevard interchange on Interstate 5 in South Sacramento. In addition to the interchange, the project would extend to Cosumnes River Blvd. from its current terminus at Franklin Blvd west to the new interchange location and further west to Freeport Blvd. The project is intended to provide an East-West connector between I–5 and State Route 99 to improve mobility within the southerly limits of the city of Sacramento.

Actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment for the project. The Record of Decision (ROD) was approved on January 15, 2008. The Final Environmental Impact Statement and other documents in the FHWA administrative record file are available by contacting the FHWA or the California Department of Transportation at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act 42 U.S.C. 7401–7671(q).

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa) 11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) 42 U.S.C. 6901–6992(k).

7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. I39 (1)(1)

Issued on: January 17, 2008.

Nancy E. Bobb,

Director, State Programs, Sacramento, California.

[FR Doc. 08–289 Filed 1–28–08; 8:45am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–01–10578, FMCSA–05–21711, FMCSA–05–22194, FMCSA–05–22727]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has

concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 27, 2008. Comments must be received on or before February 28, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–01–10578, FMCSA–05–21711, FMCSA–05–22194, FMCSA–05–22727, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *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 or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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; Apr. 11, 2000). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Francis M. Anzulewicz; Donald R. Date, Jr.; Kenneth R. Murphy; Donald J. Bierwirth, Jr.; John E. Kimmet, Jr.; Paul D. Schnautz; Arthur L. Bousema; Jason L. Light; Robert A. Sherry; Matthew Daggs; Robert Mollicone; John R. Snyder.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 53826; 66 FR 66966; 68 FR 69434; 70 FR 74102; 70 FR 48797; 70 FR 61493; 70 FR 57353; 70 FR 72689; 70 FR 71884; 70 FR 4632). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 28, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published

notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 22, 2008

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–1527 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0009; Notice 1]

Bridgestone Firestone North American Tire, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Bridgestone Firestone North American Tire, LLC (BFNT) has determined that certain tires that it manufactured in September and October of 2007, did not fully comply with paragraph S5.5.1(a) of 49 CFR 571.139, Federal Motor Vehicle Safety Standard (FMVSS) No. 139 *New Pneumatic Radial Tires for Light Vehicles*. For the passenger car and light truck tires it regulates, FMVSS No. 139 requires mandatory compliance for new tires manufactured on or after September 1, 2007. BFNT has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BFNT has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BFNT's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 3,963 Bridgestone brand P235160R17, DUELER H/T 684 II tires, produced in the Aiken Plant during the DOT weeks of 38, 39, 40, 41, and 42 in 2007. Paragraph S5.5.1(a) of 49 CFR 571.139 requires that for regulated radial passenger car and light truck tires manufactured on or after September 1, 2007, but before September 1, 2009, they be permanently labeled with the tire identification number required by 49 CFR part 574 on a sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number containing all characters in the tire identification number, except for the dated code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.

BFNT explains that 3,963 P235160R17 size Bridgestone Dueler AIT 684 11 tires, produced at its Aiken plant (DOT serial code is 7XOUBD43807 through 7XOUBD44207) were mismarked as explained below. 1,862 of these tires are currently under BFNT's control and 2,101 remain in the replacement market in the U.S.

BFNT describes the mismarking by stating that the affected tires are marked with a complete Tire Identification Number (TIN) on one sidewall and no TIN or partial TIN on the opposite sidewall. Therefore, the noncompliance is a sidewall mismarking as follows:

Actual stamping is BLANK. (on one sidewall).

Correct stamping should be: 7XOUBD4 (on that sidewall).

BFNT states that it believes that the noncompliance described herein is inconsequential as it relates to Motor Vehicle Safety. The subject tires were not marked with the partial TIN on one sidewall as required. BFNT believes that this noncompliance is unlikely to have an adverse impact on motor vehicle safety since the actual performance of the subject tires will not be affected by the mismarking.

BFNT makes the argument that the noncompliant tires meet or exceed all performance requirements of FMVSS No. 139, and will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

BFNT further states that the Tire Identification Number (TIN) becomes important in the event of a safety campaign so that the consumer may properly identify the recalled tire(s). The subject tires are marked in the same manner that was the requirement for many years until the FMVSS 139 markings which required additional TIN information on the opposite sidewall became effective. For this mislabeling, any safety campaign communication, if necessary, could include in the listing of recalled TINs, direction to the consumer to read both sidewalls of each tire on the vehicle for the TINs or partial TINs so that the consumer would know that these mislabeled tires are included in any future recall.

In view of the information and facts presented, BFNT submits that the mismarking of the subject tires should be deemed inconsequential as it relates to Motor Vehicle Safety and requests that it be granted an exemption from the notification and remedy requirements of the Safety Act.

NHTSA notes that due to the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions apply to only the 2,101 tires that have already passed from the manufacturer to an owner, purchaser, or dealer. Subsequent to receipt of the subject petition, BFNT informed NHTSA that they have remedied the mismarking on the 1,862 tires still under their control bringing those tires into compliance with FMVSS No. 139.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open

on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. Please note that we are allowing just 10 days for comment in order to expedite resolution of this matter. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 8, 2008.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: January 23, 2008.

Claude H. Harris

Director, Office of Vehicle, Safety Compliance.

[FR Doc. E8–1543 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0012; Notice 1]

Chrysler, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Chrysler, LLC (Chrysler) has determined that certain vehicles that it manufactured during the period of October 1, 2003 through August 28, 2007, do not fully comply with either paragraph S4.3.3 of 49 CFR 571.110 (Federal Motor Vehicle Safety Standards (FMVSS) No. 110 *Tire Selection and Rims for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 Pounds) or Less*) or paragraph S5.3 of 49 CFR 571.120 (*FMVSS No. 120 Tire Selection and Rims for Vehicles Other Than Passenger Cars*)—depending on when the vehicle was manufactured. Chrysler has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Chrysler has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Chrysler's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 154,000 model year 2005–2008 Dodge Magnum multipurpose passenger vehicles (MPV), and approximately 103,000 model year 2007–2008 Jeep Compass and Jeep Patriot MPVs. Paragraphs S4.3.3 of 49 CFR 571.110 and S5.3 of 49 CFR 571.120 require that:

4.3.3 of 49 CFR 571.110

Additional labeling information for vehicles other than passenger cars. Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by Sec. 567.4 or Sec. 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format:

Truck Example—Suitable Tire-Rim Choice

GVWR: 2,441 kilograms (5381 pounds).

GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.0 rims at 248 kPa (36 psi) cold single.

GAWR: Rear—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.00 rims, at 248 kPa (36 psi) cold single.

S5.3 *Label information* of 49 CFR 571.120

Each vehicle shall show the information specified in S5.3.1 and S5.3.2 and, in the case of a vehicle equipped with a non-pneumatic spare tire, the information specified in S5.3.3, in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the format set forth following this section. This information shall appear either—

(a) After each GAWR listed on the certification label required by Sec. 567.4 or Sec. 567.5 of this chapter; or, at the option of the manufacturer,

(b) On the tire information label affixed to the vehicle in the manner, location and form described in Sec. 567.4 (b) through (f) of this chapter, as appropriate for each GVWR–GAWR combination listed on the certification label.

S5.3.1 Tires. The size designation (not necessarily for the tires on the vehicle) and the recommended cold inflation pressure for those tires such that the sum of the load ratings of the tires on each axle (when the tires' load carrying capacity at the specified pressure is reduced by dividing by 1.10, in the case of a tire subject to FMVSS No. 109) is appropriate for the GAWR as calculated in accordance with S5.1.2.

S5.3.2. Rims. The size designation and, if applicable, the type designation of Rims (not necessarily those on the vehicle) appropriate for those tires.

TRUCK EXAMPLE—SUITABLE TIRE-RIM CHOICE

GVWR: 7,840 KG (17,289 LB)

GAWR: FRONT—2,850 KG (6,280 LB) WITH 7.50–20(D) TIRES, 20x6.00 RIMS AT 520 KPA (75 PSI) COLD SINGLE

GAWR: REAR—4,990 KG (11,000 LB) WITH 7.50–20(D) TIRES, 20x6.00 RIMS, AT 450 KPA (65 PSI) COLD DUAL

GVWR: 13,280 KG (29,279 LB)

GAWR: FRONT—4,826 KG (10,640 LB) WITH 10.00–20(F) TIRES, 20x7.50 RIMS, AT 620 KPA (90 PSI) COLD SINGLE

GAWR: REAR—8,454 KG (18,639 LB) WITH 10.00–20(F) TIRES, 20x2.70 RIMS, AT 550 KPA (80 PSI) COLD DUAL

S5.3.3 The non-pneumatic tire identification code, with which that assembly is labeled pursuant to S4.3(a) of Sec. 571.129.

Chrysler explains that S4.3.3 of FMVSS No. 110, which applies only to vehicles other than passenger cars with a GVWR of 10,000 pounds or less, and which went into effect on September 1, 2005, provides as follows: ''Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR [Gross Axle Weight Rating] listed on the certification label required by § 567.4 or § 567.5 of this chapter * * *'' Prior to September 1, 2005, similar requirements set out in S5.3 of FMVSS No. 120 applied to all non-passenger cars, regardless of their GVWR. 94,718 Dodge Magnums manufactured prior to September 1, 2005 failed to meet the requirements of FMVSS No. 120 and the remainder of the subject vehicles failed to meet the requirements of FMVSS No. 110.

Chrysler explains further that although the certification labels on the vehicles in question do not contain the appropriate tire and rim information after the specified GAWRs, the rim size and type are marked on the rims themselves. And, the size designation for the tires on each vehicle, which also reflects the size of the rims on the vehicle, is included on the tire placard affixed to the B-pillar on each vehicle, as required by S4.3(d) of FMVSS No. 110 for vehicles manufactured after September 1, 2005. Additionally, Magnums manufactured prior to September 1, 2005 had a Tire and Loading Information Label containing the relevant tire and rim size affixed to the B-pillar. Thus, the relevant rim

information is clearly available to each vehicle owner and operator.

Chrysler also states that it has not received any consumer complaints regarding the absence of rim size information on the subject certification label.

In addition, Chrysler states that it has corrected the problem that caused these errors so that they will not be repeated in future production and that it believes that because the noncompliance is inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. Please note that we are allowing just 10 days for comment in order to expedite resolution of this matter. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 8, 2008.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: January 23, 2008.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E8–1539 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–28505]

Pipeline Safety: Special Permits Granted

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

ACTION: Notice.

SUMMARY: This notice provides a list of the special permits PHMSA granted in calendar year 2007.

SUPPLEMENTARY INFORMATION: The Federal pipeline safety laws in 49 U.S.C. 60118(c)(1) allow a pipeline operator to request and PHMSA to waive compliance with any part of the Federal pipeline safety regulations. A special permit is the name PHMSA uses for a decision granting a pipeline operator's request for waiver. Before granting a special permit, PHMSA publishes a notice seeking public comment on the request in the **Federal Register**. The docket IDs in the list below refer to dockets established for each request for waiver in the Federal Docket Management System (FDMS) located on the internet at *http://www.Regulations.gov.*

The FDMS allows Federal agencies to post rulemaking and non-rulemaking documents in dockets. It serves as a one-stop source to allow anyone to find, view or comment on all Federal regulations and related materials. The initial requests by the operators, supplemental written materials, relevant **Federal Register** notices, public comments, special permit analyses, and the decision granting the special permits are located in the applicable dockets in the FDMS on the *http://www.Regulations.gov* Web site. You can find a docket by using the search function. Simply type in the complete docket number in the search address box and hit ''go'' or hit enter on your keyboard.

The PHMSA granted the following special permits in calendar year 2007:

Docket ID	Requester	Regulation(s)	Nature of waiver
PHMSA–2006–25734.	Freeport LNG	49 CFR 193.2301	To authorize the use of ultrasonic testing to inspect Liquefied Natural Gas (LNG) tank welds.
PHMSA–2006–25735.	Sabine Pass LNG	49 CFR 193.2301	To authorize the use of ultrasonic testing to inspect LNG tank welds.
PHMSA–2006–25803.	Kinder Morgan Louisiana Pipeline (KMLP).	49 CFR 192.111 & 192.201(a)(2)(i).	To authorize KMLP to operate Class 1 locations along the Leg 1 segment of the new KMLP pipeline at a maximum allowable operating pressure (MAOP) corresponding to a pipe stress level up to 80% of the steel pipe's specified minimum yield strength (SMYS). The Leg 1 segment is a 42-inch, 137-mile pipeline originating at the Sabine Pass LNG terminal and extending to Evangeline Parish, LA.
PHMSA–2006–26617.	TransCanada Keystone Pipeline, LP.	49 CFR 195.106 & 195.406.	To authorize the operation of a 1,369-mile crude oil pipeline from the Canadian border near Cavalier County, ND to Payne County, OK and from Jefferson County, NE to Marion County IL at an MAOP of 80% of SMYS.
PHMSA–2006–26532.	Chesapeake Appalachia, L.L.C. (formerly Columbia Natural Resources).	49 CFR 192.619	To authorize Chesapeake to establish the MAOP of various segments of their gas gathering pipeline system in Kentucky and West Virginia using a five year operating history.
PHMSA–2007–27646.	Cameron LNG, LLC	49 CFR 193.2301	To authorize the use of automatic ultrasonic testing to inspect LNG tank welds.

Docket ID	Requester	Regulation(s)	Nature of waiver
PHMSA–2006–25802.	CenterPoint Energy Gas Transmission.	49 CFR 192.111, 192.201 & 192.619.	To authorize the operation of a 172-mile gas transmission pipeline from Carthage, TX to Perryville, LA at an MAOP of 80% of SMYS.
PHMSA–2006–26533.	Gulf South Pipeline	49 CFR 192.111, 192.201 & 192.619.	To authorize the operation of certain segments of a proposed gas transmission pipeline from Carthage, TX to Harrisville, MS at an MAOP of 80% of SMYS.
PHMSA–2007–28276.	Golden Pass LNG Terminal, L.L.C..	49 CFR 193.2301	To authorize the use of automatic ultrasonic testing to inspect LNG tank welds.
PHMSA–2006–26613.	BP Exploration (Alaska) Inc..	49 CFR 195.424	To authorize the movement of certain aboveground hazardous liquid pipeline sections during routine inspection and maintenance activities without reducing the operating pressure on approximately 150 miles of hazardous liquid pipelines in the North Slope of Alaska.
PHMSA–2006–26529.	ConocoPhillips Alaska Pipeline.	49 CFR 195.424	To authorize the movement of certain aboveground hazardous liquid pipeline sections during routine inspection and maintenance activities without reducing the operating pressure on approximately 100 miles of hazardous liquid pipelines in the North Slope of Alaska.
PHMSA–2006–26528.	Dominion Transmission, Inc..	49 CFR 192.611	To authorize the operation of 5,722 ft of a gas transmission pipeline between Loudon and Quantico, VA without reducing the operating pressure as a result of a change from a Class 1 to a Class 3 location.
PHMSA–2006–24058.	TransCanada Pipelines Limited, Portland Natural Gas Transmission System (PNGTS).	49 CFR 192.611	To authorize the operation of 7,679 ft in two segments of the PNGTS pipeline near the town of North Windham, ME, without reducing the operating pressure as a result of a change from a Class 1 to a Class 3 location.

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on January 23, 2008.

Barbara Betsock,

Acting Director, Office of Regulations.

[FR Doc. E8–1502 Filed 1–28–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35115]

Arizona Eastern Railway, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement, Union Pacific Railroad Company (UP) has agreed to grant nonexclusive overhead trackage rights to Arizona Eastern Railway, Inc. (AZER) over a UP line of railroad known as the Lordsburg Subdivision, between milepost 1150.00 in Lordsburg, NM and milepost 1098.12, in Bowie, AZ, a distance of approximately 52.12 miles.[1]

AZER indicates that the transaction is scheduled to be consummated on or after February 11, 2008, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the trackage rights is to improve service by establishing a rail link allowing AZER to move traffic originating or terminating on its Bowie-Miami Line and traffic originating or terminating on its soon to be acquired Clifton Subdivision.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 4, 2008 (at least 7 days before the exemption become effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term 'solid waste' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35115, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mack H. Shumate, Jr., 101 N. Wacker Drive, Suite 1920, Chicago, IL 60606 and John D. Heffner, 1750 K Street, NW., Suite 350, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 23, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–1474 Filed 1–28–08; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted draft version of the trackage rights agreement between AZER and UP was filed with the notice of exemption. The full draft version was concurrently filed under seal along with a motion for protective order, which will be addressed in a separate decision. As required by 49 CFR 1180.6(a)(7)(ii), the parties must file a copy of the executed agreement within 10 days of the date the agreement is executed.

DEPARTMENT OF THE TREASURY

Departmental Offices; Interim Guidance Concerning the Terrorism Risk Insurance Reauthorization Act of 2007

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice provides interim guidance to insurers, policyholders, state insurance regulators and the public concerning recent statutory amendments to the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297,

116 Stat. 2322) (the ''Act''). Those amendments revise the definition of an ''act of terrorism'' covered by the Act, and make certain other changes. This notice addresses the changes to mandatory availability (''make available'') and disclosure requirements.

DATES: This notice is effective immediately and will remain in effect until superseded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Howard Leikin, Deputy Director, Terrorism Risk Insurance Program (202–622–6770).

SUPPLEMENTARY INFORMATION: This notice provides interim guidance to assist insurers, policyholders, state insurance regulators and the public in understanding certain requirements of the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, pending the issuance of regulations by the Department of the Treasury. The interim guidance contained in this notice may be relied upon by insurers in complying with these statutory requirements prior to the issuance of regulations, but is not the exclusive means of compliance. This interim guidance remains in effect until superseded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (''TRIA'' or the ''Act''). The Act became effective immediately. It established a temporary Terrorism Risk Insurance Program (''TRIP'' or the ''Program'') of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, as defined in the Act. The Act was scheduled to expire on December 31, 2005. The Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144) (Extension Act) extended TRIA through December 31, 2007. On December 26, 2007, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2007 (''Reauthorization Act''). The Reauthorization Act extends the Program through December 31, 2014 (with calendar years 2008–2014 being called the ''Additional Program Years''). Other provisions of the Reauthorization Act:

- Revise the definition of ''Act of Terrorism'' to remove the requirement that the act of terrorism be committed by an individual acting on behalf of any foreign person or foreign interest in order to be certified as an ''act of terrorism'' for purposes of the Act.
- Define ''Insurer Deductible'' for all Additional Program Years as the value of an insurer's direct earned premium for commercial property and casualty insurance for the immediately preceding calendar year multiplied by 20 percent.
- Set the Federal share of compensation for insured losses (subject to a $100 million Program Trigger) for all Additional Program Years at 85 percent of that portion of the amount of insured losses that exceeds the applicable insurer deductible.
- Require Treasury to submit a report to Congress and issue final regulations for determining the *pro rata* share of insured losses to be paid under the Program when aggregate insured losses exceed the annual liability cap of $100,000,000,000.
- Require the Secretary of the Treasury to notify Congress not later than 15 days after the date of an act of terrorism as to whether aggregate insured losses are estimated to exceed $100,000,000,000.
- Require for policies issued after the date of enactment, that insurers provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap at the time of offer, purchase, and renewal of a policy (in addition to current disclosure requirements).
- Revise the recoupment provisions of the Act. For purposes of recouping the Federal share of compensation under the Act, the ''insurance marketplace aggregate retention amount'' for all Additional Program Years is the lesser of $27.5 billion and the aggregate amount, for all insurers, of insured losses during each Program Year. With regard to mandatory recoupment of the Federal share of compensation through policyholder surcharges, collection is required within a certain schedule specified in the Reauthorization Act. The limitation that surcharges not exceed 3 percent of the premium charged for property and casualty insurance coverage under the policy is eliminated (but remains in the case of discretionary recoupment).
- Require Treasury to issue recoupment regulations within 180 days of enactment, and publish an estimate of aggregate insured losses within 90 days after an act of terrorism.
- Require the President's Working Group on Financial Markets to perform an ongoing analysis regarding the long-term availability and affordability of terrorism risk insurance and submit reports in 2010 and 2013.
- Require the Comptroller General to examine and report on the availability and affordability of insurance coverage for nuclear, biological, chemical, and radiological terrorist events; the future outlook for such coverage; and the capacity of insurers and State workers compensation funds to manage the risk associated with nuclear, biological, chemical, and radiological terrorist events.
- Require the Comptroller General to study and report on the question of whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

II. Interim Guidance

Treasury will be issuing regulations to administer and implement TRIA, as amended by the Reauthorization Act. This notice is issued to assist insurers in complying with certain new statutory requirements pending the issuance of such regulations. This notice contains interim guidance concerning compliance with the mandatory availability or ''make available'' requirements in section 103(c) of the Act, and the disclosure notice requirements in section 103(b) of the Act. Other requirements in current regulations remain in effect.

Given the change in the definition of an ''Act of Terrorism,'' will Treasury be issuing specific guidance concerning the language in property and casualty insurance policies?

As noted above, the Reauthorization Act revises the definition of an ''act of terrorism'' in section 102(1)(A)(iv) of TRIA and removes the requirement that the act be committed by an individual or individuals ''acting on behalf of any foreign person or foreign interest'' to be certified as an ''act of terrorism''.

Treasury understands that the language in property and casualty insurance policies describing a ''certified'' act of terrorism covered by TRIA and other (or ''non-certified'') acts of terrorism has varied. In addition, insurers have designed their insurance contracts and notifications to policyholders concerning potential changes to the certification criteria for ''acts of terrorism'' differently. Insurers must determine how their policy language and particular circumstances are affected by the revised definition of an act of terrorism.

It is Treasury's intent with this guidance and in subsequent regulations to address the statutory requirements and regulations of TRIA, as amended by the Reauthorization Act. The decision whether to certify an act of terrorism will be governed by the criteria in TRIA,

as amended by the Reauthorization Act. Treasury will consider losses resulting from an act of terrorism (as now defined in TRIA) that are covered by an insurer under a policy for property and casualty insurance to be insured losses covered by the Program, provided the insurer makes payment to the policyholder in accordance with the terms and conditions of the policy, appropriate business practices, and other applicable requirements and conditions.

How do the ''make available'' and disclosure requirements apply to initial offers of coverage and offers of renewal?

There is no change to the TRIA requirements in section 103(c) that insurers make available, in all property and casualty insurance policies, coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. However, because the ''make available'' requirements apply to ''insured losses,'' and an ''insured loss'' is defined, in part, as a loss resulting from an ''act of terrorism,'' the revision of the definition of an act of terrorism in the Reauthorization Act to eliminate the ''foreign person or interest'' element (*i.e.*, to add what is often referred to as ''domestic terrorism'') may have an impact on an insurer's compliance with the ''make available'' requirements.

The Reauthorization Act is effective immediately upon enactment, December 26, 2007. The TRIA regulations in 31 CFR 50.21(a) generally provide that the ''make available'' requirements apply at the time of the initial offer of coverage or offer of renewal of an existing policy. Thus, any initial offers of coverage, or offers of renewal of existing policies, made on or after the date of enactment, must be consistent with the revised definition of act of terrorism.

The Reauthorization Act also made no change to the requirement in section 103(b) in TRIA that insurers provide clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. These disclosures must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy. However, disclosure of the premium must now reflect the premium charged for insured losses (as determined by the revised definition of an act of terrorism).

As stated above, any initial offers of coverage, or offers of renewal of existing policies, made on or after the date of enactment must be consistent with the revised definition of ''act of terrorism.'' So too, the required disclosure must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy. Treasury realizes that as a practical matter, insurers may have to modify operations and may be subject to rate and policy form filing and/or prior approval processes, and therefore may need some time to meet these requirements.

Treasury expects that all insurers will provide compliant initial and renewal offers and disclosures as quickly as possible. In this regard, Treasury considers March 31, 2008, to be the latest reasonable date for compliant offers of coverage and disclosures to policyholders (including reprocessing of policies, if necessary, where a compliant post-December 26, 2007 offer and/or disclosure was not possible), barring unforeseen or unusual circumstances. If the March 31 date is not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

Does an insurer have to provide a separate, new offer of terrorism risk insurance coverage for property and casualty insurance policies that are in mid-term as of January 1, 2008, if the insurer previously complied with the Act's ''make available'' requirement when the policy was issued or renewed prior to December 26, 2007?

Because under TRIA regulations, the ''make available'' requirements apply at the time of the initial offer of coverage or offer of renewal of an existing policy, no new offer is required if coverage for the duration of the policy term was offered under the provisions of the Act at the time of the offer. This is the case whether the offer was accepted or rejected. If no new offer is made, then a new disclosure of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses is also not required, because under TRIA the disclosure requirements apply at the time of offer, purchase and renewal of the policy.

If existing coverage for an act of terrorism does not continue for the duration of the policy term beyond December 31, 2007, such as a case where an exclusion becomes effective upon some circumstance, then a new offer is required for the duration of the policy term.

If for any reason an insurer makes a new offer mid-term, and that offer is after December 26, 2007, then the offer must be based on the Reauthorization Act's requirements. The associated disclosure of the premium must reflect the premium for insured losses in accordance with the revised definition of act of terrorism. Disclosure of the $100 billion cap must also be provided, as explained below.

What if a policy renewal or application was processed in 2007 for coverage becoming effective in 2008 and the insurer did not ''make available'' terrorism coverage?

The Reauthorization Act continues the ''make available'' requirement for insurers under TRIA. If an insurer wishes to receive Federal compensation under the Program for insured losses, the insurer must ''make available'' terrorism coverage for insured losses for all policies becoming effective in 2008, even if the policy was processed in late 2007 or early 2008. As noted in guidance above, Treasury expects that all insurers will provide policyholders an offer of terrorism coverage and appropriate disclosures as quickly as possible.

When must the new disclosure to policyholders of the $100 billion cap on liability be made?

The Reauthorization Act requires a clear and conspicuous disclosure to the policyholder of the existence of the $100 billion cap under section 103(e)(2) of TRIA. The requirement applies to ''any policy that is issued after the date of enactment'' of the Reauthorization Act, or December 26, 2007. Under section 103(e)(2), if the aggregate insured losses exceed $100 billion during a Program Year, Treasury shall not make any payment for any portion of the amount of such losses that exceeds $100 billion, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100 billion. The disclosure must be made at the time of offer, purchase and renewal of the policy.

For policies issued after December 26, 2007, this disclosure must be provided to the policyholder at the first occurrence thereafter of an offer, purchase or renewal.

As noted above, Treasury realizes that as a practical matter, insurers may need some time to meet these requirements. Treasury expects that all insurers will provide compliant disclosures as quickly as possible. In this regard, Treasury considers March 31, 2008, to be the latest reasonable date for providing the cap disclosure (including reprocessing of policies, if necessary, where a compliant disclosure was not possible), barring unforeseen or unusual

circumstances. If the March 31 date is not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

May an insurer still use NAIC Model Disclosure Forms to meet the disclosure requirement for property and casualty insurance policies?

Under 31 CFR 50.17(e) of the TRIA regulations, insurers are permitted to use NAIC Model Disclosure Forms No. 1 and 2 to satisfy the disclosure requirements of section 103(b)(2) of the Act, provided that the insurer uses the most current forms that are available at the time of disclosure and the current forms are deemed to satisfy the disclosure requirements of the Act. The National Association of Insurance Commissioners (NAIC) has recently modified the forms and Treasury has deemed the newly modified forms to satisfy the disclosure requirements, including the cap disclosure requirement. The new forms will be found on the Treasury Web site at *http://www.treasury.gov/trip.* Insurers are not required to use the NAIC forms, and may use other means to comply with the disclosure requirements.

Dated: January 22, 2008.

Taiya Smith,

Executive Secretary.

[FR Doc. E8–1467 Filed 1–28–08; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: CMIA Annual Report and Direct Cost Claims

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and Request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the ''CMIA Annual Report and Direct Cost Claims.''

DATES: Written comments should be received on or before March 31, 2008.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Victor Poore, Office of the Director of Operations, 401 14th Street, SW., Room 423A, Washington, DC 20227, (202) 874–6751.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: CMIA Annual Report and Direct Cost Claims.

OMB Number: 1510–0061.

Form Number: None.

Abstract: States and Territories must report interest owed to and from the Federal government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims, to assess State and Federal cash management practices and to exchange amounts of interest owed.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 56.

Estimated Time per Respondent: Average of 393.5 hours per state.

Estimated Total Annual Burden Hours: 22,036.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Sheryl R. Morrow,

Assistant Commissioner, Federal Finance.

[FR Doc. 08–348 Filed 1–28–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Financial Management Policies—Interest Rate Risk

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before March 31, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, and NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Scott Ciardi, (202) 906–6960, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Financial Management Policies-Interest Rate Risk

OMB Number: 1550–0094.

Form Numbers: N/A.

Regulation requirement: 12 CFR parts 563.

Description: The purpose of this collection requirement is to ensure that institutions are appropriately managing their exposure to interest rate risk. To comply with this reporting requirement, institutions need to maintain sufficient records for determining how their interest rate risk exposure is being internally monitored and managed, and how their exposure compares with that of other institutions.

OTS uses the information in connection with a model to advise savings associations in OTS's supervision of their activities related to interest rate risk.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit:

Estimated Number of Respondents: 832.

Estimated Number of Responses: 832.

Estimated Time per Respondent: 8 hours.

Estimated Frequency of Response: Quarterly; Annually.

Estimated Total Burden: 33,280 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 24, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–1522 Filed 1–28–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Mutual Holding Company

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before March 31, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Mutual Holding Company.

OMB Number: 1550–0072.

Form Numbers: 1522 and 1523

Regulation requirement: 12 CFR parts 575.

Description: The OTS analyzes the submitted information to determine whether the applicant meets the statutory and regulatory criteria to form a mutual holding company and/or perform minority stock issuances. Information provided in the notice or application is essential if the OTS is to fulfill its mandate to prevent insider abuse and unsafe and unsound practices by mutual holding companies and their subsidiaries. Minority issuances are not feasible without an application process that includes the review of such information.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 74.

Estimated Number of Responses: 74.

Estimated Time per Respondent: It will take 400 hours for the MHC–1, 350 hours for the MHC–2, 2 hours for the MHC Dividend Waiver, and 1 hour for the Third Party Notice.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 8,275 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision,

1700 G Street, NW., Washington, DC 20552.

Dated: January 24, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–1526 Filed 1–28–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Request for Service Corporation Activity

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before March 31, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Request for Service Corporation Activity.

OMB Number: 1550–0013.

Form Numbers: 1562 and 1566.

Regulation requirement: 12 CFR parts 545 and 559.

Description: 2 CFR 545.74 requires savings associations to obtain approval or notify the Office of Thrift Supervision (OTS) prior to engaging in activities through a service corporation that are not preapproved by regulation. It also contains a recordkeeping requirement for securities brokerage activities. 12 CFR 559.12 governs the issuance of securities. These requirements allow OTS to review service corporation activities and to ensure that they will not adversely affect an institution's safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit: Federal Government.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Estimated Time per Respondent: 15 minutes.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 14 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 24, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–1530 Filed 1–28–08; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 73, No. 19

Tuesday, January 29, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy for Section 19 of the Federal Deposit Insurance Act

Correction

Editorial Note: This correction was inadvertently removed from the issue of Friday, January 25, 2008. As a result, it is being printed in its entirety.

In notice document E7–25128 appearing on page 73823 in the issue of Friday, December 28, 2007, make the following corrections:

1. In the third column, in the first full paragraph, in the second line, footnote 1 is corrected to read as set forth below:

''[1] Pub.L. 109-351, §710''.

2. In the same column, in the first full paragraph under the heading ''A. Scope of Section 19'', the text is corrected to read as set forth below:

Section 19 covers institution-affiliated parties, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured institution.[1] * * *

[1] This Statement of Policy applies only to insured depository institutions and their institution-affiliated parties. In addition to the requirement to file an application with the FDIC, such individuals may also need to comply with any filing requirements established by the Board of Governors of the Federal Reserve System under 12 U.S.C. § 1829(d), in the case of a bank holding company, or with the Office of Thrift Supervision under 12 U.S.C. § 1829(e), in the case of a savings and loan holding company.

[FR Doc. Z7–25128 Filed 1–28–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS–4133–P]

RIN 0938–AP25

Medicare Program; Option for Prescription Drug Plans To Lower Their Premiums for Low-Income Subsidy Beneficiaries

Correction

In proposed rule document 08–15 beginning on page 1301 in the issue of Tuesday, January 8, 2008, make the following correction:

On page 1302, in the first column, under the **DATES** heading, in the fourth line ''March 10, 2008'' should read ''March 3, 2008''.

[FR Doc. C8–15 Filed 1–28–08; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56974; File No. SR–Amex–2007–132]

Self–Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Include Volume Executed by Remote Quoting Towards the Earning of Remote Quoting Rights

December 17, 2007.

Correction

In notice document E7–24801 beginning on page 72803 in the issue of Friday, December 21, 2007, make the following correction:

On page 72803, after the subject heading the date should appear as above.

[FR Doc. Z7–24801 Filed 1–28–08; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57139; File No. SR-NYSE-2008-01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to NYSE Rule 129 To Reflect the Changes to the NYSE's Gross FOCUS (Financial and Operational Combined Uniform Single Report) Fee That Commenced on January 1, 2008

January 14, 2008.

Correction

In notice document E8–832 beginning on page 3503, in the issue of Friday, January 18, 2008, make the following correction:

On page 3503, in the first column, the document heading should include the date as it appears above.

[FR Doc. Z8–832 Filed 1–28–08; 8:45 am]

BILLING CODE 1505–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 8873; Release No. 56986]

Securities Act of 1933; Securities Exchange Act of 1934; Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2008

December 18, 2007.

Correction

In notice document E7–24909 beginning on page 73501 in the issue of Wednesday, December 26, 2007, make the following correction:

On page 73051, after the subject heading the date should appear as above.

[FR Doc. Z7–24909 Filed 1–28–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 29, 2008

Part II

Department of Homeland Security

6 CFR Part 37

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

[Docket No. DHS–2006–0030]

RIN 1601–AA37

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is establishing minimum standards for State-issued driver's licenses and identification cards that Federal agencies would accept for official purposes on or after May 11, 2008, in accordance with the REAL ID Act of 2005. This rule establishes standards to meet the minimum requirements of the REAL ID Act of 2005. These standards involve a number of aspects of the process used to issue identification documents, including: Information and security features that must be incorporated into each card; application information to establish the identity and immigration status of an applicant before a card can be issued; and physical security standards for facilities where driver's licenses and applicable identification cards are produced. This final rule also provides a process for States to seek an additional extension of the compliance deadline to May 11, 2011, by demonstrating material compliance with the core requirements of the Act and this rule. Finally, taking into consideration the operational burdens on State Departments of Motor Vehicles, this rule extends the enrollment time period to allow States determined by DHS to be in compliance with the Act to replace all licenses intended for official purpose with REAL ID-compliant cards by December 1, 2014 for people born after December 1, 1964, and by December 1, 2017 for those born on or before December 1, 1964.

DATES: *Effective Date:* This rule is effective March 31, 2008. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 31, 2008.

Compliance Dates: Extensions: As of May 11, 2008, Federal agencies cannot accept driver's licenses or identification cards for official purposes, as defined herein, from States that have not been determined by DHS to be in compliance with the REAL ID Act unless a State has requested and obtained an extension of the compliance date from DHS. States seeking extensions must submit a request for an extension to DHS no later than March 31, 2008. As of December 31, 2009, any initial extension will terminate unless a State, no later than October 11, 2009, submits to DHS a request for an additional extension and certification that the State has achieved the benchmarks set forth in the Material Compliance Checklist. As of May 11, 2011, driver's licenses and identification cards will not be accepted from States that are not in full compliance with the provisions of REAL ID.

Enrollment: As of December 1, 2014, Federal agencies cannot accept driver's licenses or identification cards for official purposes, as defined herein, from any individual born after December 1, 1964, unless DHS has determined that the issuing State is in compliance with Subparts A through D of this rule and the card presented by the individuals meet the standards of this rule. As of December 1, 2017, Federal agencies will not accept any State-issued driver's licenses and identification cards for official purposes unless such cards have been issued by States that have certified to DHS their compliance with Subparts A through D of this rule.

FOR FURTHER INFORMATION CONTACT: Darrell Williams, REAL ID Program Office, Department of Homeland Security, Washington, DC 20528 (202) 282–9829.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AAMVA—American Association of Motor Vehicle Administrators
ACLU—American Civil Liberties Union
CAC—U.S. Department of Defense Common Access Card
CDLIS—Commercial Drivers License Information System
CHRC—Criminal History Records Check
CRBA—Consular Report of Birth Abroad
DHS—U.S. Department of Homeland Security
DMV—Department of Motor Vehicles
DOS—U.S. Department of State
DOT—U.S. Department of Transportation
EAD—Employment Authorization Document
EDL—Enhanced driver's license and identification card
EVVE—Electronic Verification of Vital Events
FOIA—Freedom of Information Act
IAFIS—Integrated Automated Fingerprint Identification
ICAO—International Civil Aviation Organization
ID—Identification Card
JPEG—Joint Photographic Experts Group
LPR—Lawful Permanent Resident
MRZ—Machine Readable Zone
NAPHSIS—National Association of Public Health Statistics and Information Systems
NASCIO—National Association of State Chief Information Officers
NCSL—National Conference of State Legislatures
NCIC—National Crime Information Center
NGA—National Governors Association
NPRM—Notice of Proposed Rulemaking
PII—Personally Identifiable Information
RFID—Radio Frequency Identification
SAVE—Systematic Alien Verification for Entitlements
SEVIS—Student and Exchange Visitor Information System
SSA—Social Security Administration
SSI—Sensitive Security Information
SSN—Social Security Number
SSOLV—Social Security On-Line Verification
TIF—Tagged Image Format
TSA—Transportation Security Administration
TWIC—Transportation Worker Identification Credential
USCIS—U.S. Citizenship and Immigration Services
WHTI—Western Hemisphere Travel Initiative

Table of Contents

I. Background
II. Discussion of the Final Rule
  A. Extension of Deadlines
  B. Implementation Dates
  C. Verification and Data Exchange Systems Architecture
  D. Marking of Compliant REAL ID Documents
  E. Prohibition on States Issuing Real ID Cards to Persons Who Hold a Driver's License in Another State
  F. Western Hemisphere Travel Initiative
III. Section-by-Section Analysis of the Final Rule
IV. Discussion of Comments
  A. General Comments on the Proposed Regulation
  B. Scope, Applicability, and Definitions
  C. Compliance Period
  D. Privacy Considerations
  E. State to State Database Queries
  F. Document Standards for Issuing REAL ID Driver's Licenses and Identification Cards
  G. Exceptions Processing for Extraordinary Circumstances
  H. Temporary or Limited-Term Driver's Licenses and Identification Cards
  I. Minimum Driver's License or Identification Card Data Element Requirements
  J. Validity Period and Renewals of REAL ID Driver's Licenses and Identification Cards
  K. Source Document Retention
  L. Database Connectivity
  M. Security of DMV Facilities Where Driver's Licenses and Identification Cards are Manufactured and Produced
  N. State Certification Process; Compliance Determinations

O. Driver's Licenses and Identification Cards that Do Not Meet the Standards of the REAL ID Act.
P. Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004
Q. Responses to Specific Solicitation of Comments
V. Regulatory Analyses
A. Paperwork Reduction Act
B. Economic Impact Analyses
C. Executive Order 13132, Federalism
D. Environmental Impact Analysis
E. Energy Impact Analysis
F. Executive Order 13175, Tribal Consultation

I. Background

A. Statutory Authority and Regulatory History

This final rule establishes minimum standards for State-issued driver's licenses and identification cards that Federal agencies can accept for official purposes on or after May 11, 2008, as required under the REAL ID Act of 2005. *See*, Public Law 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note) (the Act).

During the terrorist attacks on the United States on September 11, 2001, all but one of the terrorist hijackers acquired some form of identification document, some by fraud, and used these forms of identification to assist them in boarding commercial flights, renting cars, and other necessary activities leading up to the attacks. *See,* The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks upon the United States (July 2004) (9/11 Commission Report), p. 390. The 9/11 Commission recommended implementing more secure sources of identification for use in, among other activities, boarding aircraft and accessing vulnerable facilities. In its report, the Commission stated:

> Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.

Id. at 390.

Congress enacted the Act in May 2005, in response to the 9/11 Commission's recommendations.

Under the Act, Federal agencies are prohibited, effective May 11, 2008, from accepting a driver's license or a State-issued personal identification card for an official purpose unless the issuing State is meeting the requirements of the Act. ''Official purpose'' is defined under § 201 of the Act to include access to Federal facilities, boarding Federally-regulated commercial aircraft, entry into nuclear power plants, and such other purposes as established by the Secretary of Homeland Security. Undoubtedly, the most significant impact on the public of this statutory mandate is that, effective May 11, 2008, citizens of States that have not been determined by DHS to be in compliance with the mandatory minimum requirements set forth in the REAL ID Act may not use their State-issued driver's licenses or identification cards to pass through security at airports. Citizens in this category will likely encounter significant travel delays.

The Act authorizes the Secretary of Homeland Security, in consultation with the States and the Secretary of Transportation, to promulgate regulations to implement the requirements under this Act. Section 205(b) of the Act further authorizes the Secretary of Homeland Security to grant extensions of time to meet the minimum standards of the Act when States provide adequate justification for noncompliance. The Act does not, however, give DHS the authority to waive any of the mandatory minimum standards set forth in the Act. Those mandatory provisions are set forth below.

Section 202(b) of the Act directs that REAL ID-compliant licenses and identification cards must include the following information:

(1) The person's full legal name, date of birth, and gender;

(2) The person's driver's license or identification card number;

(3) A digital photograph of the person;

(4) The person's address of principal residence;

(5) The person's signature;

(6) Physical security features designed to prevent tampering, counterfeiting, or duplication of the driver's licenses and identification cards for fraudulent purposes; and

(7) A common machine-readable technology, with defined minimum elements.

Section 202(c) of the Act also mandates certain minimum standards that States must adopt when issuing driver's licenses and identification cards intended for use for official purposes (referred to as REAL ID-compliant cards). Those standards include, but are not limited to, the following:

- The State shall require, at a minimum, presentation and verification of (1) A photo identity document (except that a non-photo identity document is acceptable if it includes both the applicant's full legal name and date of birth); (2) documentation showing the applicant's date of birth; (3) proof of the person's Social Security Number (SSN) or verification that the applicant is not eligible for a SSN; and (4) documentation showing the applicant's name and address of principal residence. § 202(c).
- The State shall require valid documentary evidence that the applicant is lawfully present in the United States. Such evidence shall include documentary evidence that the applicant: (1) Is a citizen or national of the United States; (2) is an alien lawfully admitted for permanent residence or temporary residence in the United States or pending application for same; (3) has conditional permanent resident status in the United States or pending application for such status; (4) has an approved application for asylum in the United States, a pending application for asylum, or has been admitted to the United States in refugee status; (5) was lawfully admitted to the United States using a valid, unexpired nonimmigrant visa; (6) has a pending or approved application for temporary protected status in the United States; or (7) has approved deferred action status. § 202(c)(2)(B).
- States must establish procedures to verify each document required to be presented by the applicant. The State also shall have entered into a memorandum of understanding (MOU) with DHS to use the Systematic Alien Verification for Entitlements (SAVE system) to verify the lawful status of an applicant, other than a U.S. citizen. § 202(c)(3)(C).
- States also must confirm with the Social Security Administration (SSA) that the SSN presented by an applicant (as required under § 202(c)(1)(C)) is registered to that person. § 202(d)(5).
- States must ensure the physical security of facilities where driver's licenses and identification cards are produced; and the security of document materials and papers from which driver's licenses and identification cards are produced. § 202(d)(7).
- All persons authorized to manufacture or produce cards to appropriate security clearance requirements. § 202(d)(8).
- Physical security features on the driver's licenses and identification cards designed to prevent tampering, counterfeiting, and duplication of the documents for a fraudulent purpose. § 202(b)(8).

The Act also permits a State otherwise in compliance with the Act to issue driver's licenses and identification cards that do not conform to the Act's

requirements. See § 202(d)(11). Federal agencies, however, cannot accept such driver's licenses and identification cards for an official purpose and States must ensure that such cards or licenses must state on their faces that a Federal agency may not accept it for an official purpose. *See* § 202(d)(11)(A). States also must use a unique design or color indicator so that it is readily apparent to Federal agency personnel that the card is not to be accepted for an official purpose. *See* § 202(d)(11)(B).

The Act requires DHS to determine whether a State is meeting the Act's requirements based upon certifications submitted by each State in a manner prescribed by DHS.

II. Discussion of Final Rule

DHS published an NPRM on March 3, 2007, proposing requirements to meet the minimum standards required under the Act. The proposed requirements included information and security features that must be incorporated into each card; application information to establish the identity and immigration status of an applicant before a card can be issued; and physical security standards for facilities where driver's licenses and identification cards are produced. For additional information, please see the NPRM at 72 FR 10820.

DHS received over 21,000 comments on the NPRM and supporting regulatory evaluation during the sixty-day public comment period for this rulemaking action. Responses to those comments are set forth in Section IV of this final rule. This final rule implements the requirements of the Act, but with significant changes from the NPRM as a result of public comment, as discussed below.

As discussed above, effective May 11, 2008, Federal agencies are prohibited from accepting for official purposes state-issued driver's licenses or identification cards unless an issuing State certifies, and DHS determines, that it has met the mandatory minimum requirements of § 202 of the REAL ID Act. Several States have implemented—or are working to implement—legislation prohibiting their Departments of Motor Vehicles (DMVs) from complying with the requirements of the Act or any related implementing regulations issued by DHS. DHS wants to make clear that effective May 11, 2008, individuals from States who have not obtained an extension of the compliance date from DHS, or who have not submitted a Compliance Package to DHS under the deadlines provided in this final rule, will not be able to use their State-issued license for federal official purposes, including for identification to board a commercial airplane. Residents of States that do choose to comply, however, through submission of their Compliance Plan or a timely-filed request for an extension, will be able to continue to use their current license to board commercial aircraft (and for other official purposes) through December 1, 2014. Effective December 1, 2014, Federal agencies will refuse to accept non-REAL ID-compliant driver's licenses from all persons born before December 1, 1964 (i.e. under the age of fifty). Effective December 1, 2017, anyone seeking to use a State-issued driver's license or identification card for official purpose, including boarding of commercial aircraft, must have a REAL ID-compliant card.

A. Extension of Deadlines

Under section 205(b) of the Act, the Secretary of Homeland Security is authorized to grant extensions of the May 11, 2008 compliance date to those States who provide adequate justification for their inability to comply by the statutory deadline. On March 1, 2007, the Secretary of Homeland Security announced, in conjunction with the release of the NPRM, that the Department would grant extensions to all States requesting extensions, not to exceed December 31, 2009. In the NPRM, DHS proposed that States that would not be able to comply by May 11, 2008, should request an extension of the compliance date no later than February 10, 2008, and the proposal encouraged States to submit requests for extension as early as October 1, 2007. Under this final rule, States must file requests for an initial extension no later than March 31, 2008. That initial extension would expire on December 31, 2009. Pursuant to § 37.55 of this rule, States must submit requests for extensions to the REAL ID Program Office. Contact information is provided in the ''For Further Information'' section of this rule. Requests for extension must be submitted from the highest level executive official in the State overseeing the DMV to the REAL ID Program Office.

DHS received numerous comments from States arguing that the lack of a centralized verification system would make it impossible for most, if not all, States to comply with the minimum statutory requirements by December 31, 2009. DHS recognizes the difficulty that many States may have in meeting the statutory requirements under the Act, but emphasizes that the Department has a critical responsibility to ensure that identification documents used to board commercial air carriers or access Federal buildings are secure documents and adequately prevent persons from circumventing Federal security and screening requirements by use of false or fraudulent identification.

In balancing the operational needs of the States against the security responsibilities of DHS and the Federal Government, DHS has decided to allow States to obtain an extension beyond December 31, 2009. DHS, however, will only grant a second extension to States that demonstrate that they have achieved certain milestones towards compliance with the Act and the final rule. States unable to demonstrate this progress will not be able to receive an additional extension. DHS has identified eighteen milestones, captured in the ''Material Compliance Checklist,'' that States must certify they have met in order to obtain an extension of the compliance deadline beyond December 31, 2009. The Material Compliance Checklist is available at DHS' Web site at *www.dhs.gov.* The eighteen milestones are all mandatory requirements under the Act; one of the most important ones, however, is the State's ability to verify that the applicant is lawfully present in the United States. Any second extension will terminate effective May 11, 2011, at which time, as discussed above, the State must begin issuing fully compliant REAL ID cards.

B. Phased Enrollment Periods

DHS initially proposed that States determined by DHS to be in compliance with the Act and the final rule would have until May 11, 2013 to replace all driver's licenses and identification cards with REAL ID-compliant cards. Under the NPRM, licenses intended for Federal official purposes issued by States on or after May 11, 2008 and determined by DHS to be in compliance with the Act and this final rule would be REAL ID-compliant, and the State would have worked to replace existing licenses, through standard renewal or replacement processes no later than May 11, 2013. Until that phased-in enrollment period concluded on May 11, 2013, Federal agencies would accept from residents of compliant States both REAL ID-compliant licenses dated on or after May 11, 2008 or standard licenses issued before May 11, 2013. The NPRM also proposed the same phase-in period for States requesting initial extensions of the compliance date until December 31, 2009, i.e., States receiving an extension would still have until May 11, 2013 to enroll their current drivers.

During the public comment period, a number of States and State associations noted that States obtaining an initial extension of the compliance date until

December 31, 2009, would still be required to enroll their existing driver population (estimated to be approximately 240 million) by May 11, 2013. This would essentially halve the phase-in period and create an untenable burden and increased costs on States who were committed to complying with the REAL ID requirements. Several commenters suggested that DHS consider a risk-based approach that would permit States and DMVs to defer enrollment of a proportion of the population that statistically may present a lower risk of obtaining false or fraudulent identification to, among other potential purposes, circumvent Transportation Security Administration (TSA) passenger screening procedures and requirements or to access Federal buildings with a false identification.

DHS recognizes the significant operational impact on State DMVs if all licenses issued by a State were required to be REAL ID-compliant by May 11, 2008, or May 11, 2013; and believes that an age-based approach is the best way to balance operational concerns against security concerns. DHS has considered the best methodology to target preventive efforts against an individual attempting to fraudulently obtain an identification document to gain access to a Federal facility, nuclear facility, or commercial aircraft. In the absence of threat reporting about particular individuals, to which the DMVs will not have access, DHS has determined that the most appropriate substitute criteria to apply is age.

DHS has determined that the most logical option to reduce the significant operational burden on States is to allow States to divide their license-bearing population and re-issue REAL ID-compliant licenses through a two-phased enrollment. This approach would reduce the operational burdens on States, which otherwise would have to reissue licenses to the majority of their license-bearing populations within two years for States requiring and obtaining extensions until May 11, 2011. DHS also has determined that a phased enrollment based on age is consistent with the intent of the REAL ID Act by focusing the first phase of enrollment on the population of persons that may have a higher propensity to obtain and use fraudulent identification.

To determine a logical age to use as a cut-off point for a two-phased enrollment, DHS determined, based on comments received and statistical analysis of incident reports obtained from the TSA, that solely for purposes of establishing an age-based enrollment for compliance with the REAL ID Act, the logical point of division would be to allow States to defer enrollment for persons over the age of fifty. The statistical analysis supporting this determination was conducted by DHS utilizing TSA incident reports identifying persons arrested or detained for use of fraudulent identification at TSA screening areas during the period from October 1, 2004 through July 25, 2007. This analysis roughly indicates that persons over the age of fifty were less likely to be involved in TSA-related law enforcement incidents involving false or fraudulent identification. More specific information on the methodology underlying this assessment is provided in Section IV.C. below.

Accordingly, DHS, under this final rule, has developed a phased enrollment approach for States who have certified compliance with the requirements of the Act and this final rule, and have been determined by DHS to be in compliance with the Act and this rule. Under this final rule, once a State certifies compliance with the REAL ID Act and this final rule, the State may focus enrollment first on issuing REAL ID-compliant cards to individuals born after December 1, 1964 (those who will be less than fifty years of age as of December 1, 2014, the date of full compliance). States may delay the full enrollment of persons born on or before December 1, 1964, for three additional years, until December 1, 2017.

DHS believes that this approach balances the security objective of improving the reliability of identification documents presented for official purposes, including the boarding of commercial aircraft, with the needs of the States to spread out their compliance costs over a greater period of time and to obtain the necessary legal and budgetary approval from within their States to comply with the regulations. DHS also notes that States will be able to reduce their overall compliance costs based on phased enrollment approach. The economic analysis is presented in section V. of this rule.

C. Verification and Data Exchange Systems Architecture

The REAL ID Act requires States to verify supporting documents with the issuing agency. Because our population moves freely among the States, each State will need the capability to verify documents from issuing agencies in all other States. Although the Act places this burden on the States, DHS has worked to consider several technical solutions that would provide States with this capability. DHS has initiated a verification systems design project to define the requirements for the optimal system for REAL ID. DHS is working with the American Association of Motor Vehicle Administrators (AAMVA), the Department of Transportation (DOT), the Social Security Administration, the Department of State (DOS), the National Association of Public Health Statistics and Information Systems (NAPHSIS), and State representatives to define requirements for a ''hub'' based network and messaging systems to support the requirements of REAL ID. DHS is assessing the extent to which the current AAMVA network, communications, and systems architecture can serve as a platform for deployment of REAL ID data verification and State-to-State data exchanges.

The backbone of this hub would be AAMVAnet, the network system that AAMVA operates to facilitate data verification for State DMVs. DOT is currently funding an ongoing project to upgrade the capability of AAMVAnet by building in such security features as end-to-end data encryption and Federal Information Security Management Act-based security standards. The DOT-funded project will potentially expand AAMVAnet's capability to provide the capacity to handle the increased transaction volume for the required State-to-State transactions. Finally, the AAMVAnet backbone resides on a private network with no connectivity to the Internet. It has been, and will continue to be, a highly secure transportation layer for all communications between States and agency databases.

With respect to data verification, AAMVAnet already supports verification of both social security numbers (SSNs) and birth certificates. These application systems enable States to query the Social Security On-Line Verification (SSOLV) database managed by the Social Security Administration (SSA) and the Electronic Verification of Vital Events (EVVE) system owned and operated by NAPHSIS. While 47 States currently verify SSNs through AAMVAnet, verification of birth certificates is limited to those States whose vital events records are available online. In both cases only State DMVs can initiate queries; personal data are verified and not exchanged; and no personal information is created, modified, or stored as a result of the transaction. Working with both SSA and NAPHSIS, DHS is identifying requirements for enhancements to both application systems.

U.S. Citizenship and Immigration Services (USCIS) is working to modify the SAVE system to allow States to

facilitate their ability to meet the verification requirements under the § 202(c)(3) of REAL ID Act, a requirement that States routinely utilize the SAVE system to verify the lawful status of REAL ID card applicants. Currently, a majority of States have already entered into Memoranda of Understanding with USCIS to access and use SAVE, as required under section 202(c)(3) of the Act. USCIS is developing a standard user interface to meet all State DMV business process needs for immigration-related transactions and to draft requirements for a common messaging system that takes advantage of the same AAMVAnet standards and infrastructure that support State DMV queries against SSOLV, EVVE, and other Federal and State databases.

DHS also is exploring the alternative of using the Commercial Drivers Licensing Information System (CDLIS) as the baseline platform for supporting the State-to-State data exchange requirements of the REAL ID Act and regulation. CDLIS currently supports queries to every State DMV every time an individual applies for a driver's license in any State or the District of Columbia. CDLIS already meets the data exchange requirements of REAL ID for those drivers holding commercial driver's licenses. Moreover, CDLIS is a secure, State-governed system that stores the minimum amount of personal information possible to facilitate the routing of queries and responses between States. DHS is considering an effort to define system requirements for REAL ID State-to-State data exchanges based upon the CDLIS model or platform. This project would define a systems architecture for REAL ID State-to-State data exchanges that would leverage the ongoing CDLIS modernization project led by the DOT. DHS will work closely with DOT to build upon current and planned systems designs to meet the requirements of REAL ID.

D. Marking of Compliant REAL ID Documents

Section 202(d)(11) of the Act allows States to issue, in addition to REAL ID-compliant licenses, identification cards not intended to be accepted by Federal agencies for official purposes. Under the Act, however, any such card must clearly state on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and States must use a unique design or color indicator to alert Federal agencies and other law enforcement that it may not be accepted for any such purpose. DHS will leave the types of marking and unique coloring to the discretion of the individual States, subject to DHS approval as part of the Compliance Package to ensure that DHS officials, such as TSA screeners, can adequately distinguish between REAL ID-compliant cards and those not intended for official purposes.

Based on an analysis of feedback from several commenters, DHS, however, has determined it would be in the best interest of the nation's security for States to place a security marking on licenses and identification cards to allow Federal agencies to more readily determine which States are issuing licenses or identification cards that are REAL ID-compliant or have been determined to be ''materially compliant'' (including verifying that REAL ID applicants are lawfully present in the United States). DHS will work with States concerning marking compliant licenses and identification cards that indicate whether the document was issued in material compliance of the Act's requirements, or in full compliance of the Act's requirements as set forth in Subpart E of this rule.

E. Prohibition on States Issuing REAL ID Cards to Persons Who Hold a Driver's License in Another State

Section 202(d)(6) of the Act requires that States ''refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.'' In the NPRM, DHS maintained that we are not regulating the issuance of driver's licenses beyond that required under the REAL ID Act, but encourage the policy of ''one driver, one license.'' Following comments on the rule, however, DHS believes it is necessary to clarify that the REAL ID Act mandates that a State cannot issue a REAL ID license to a person who is holding a license issued by another State or to an individual who already holds a REAL ID card. (A person can, however, hold a REAL ID card and another non-REAL ID, non-driver's license identification card). DHS, therefore, revised § 37.33, moving that provision to a separate section (§ 37.29), to clarify and emphasize that a State cannot issue a REAL ID card without verifying that an applicant does not hold another REAL ID card or a driver's license from another State, or if the applicant holds another driver's license, that he or she is taking steps to terminate that license. *See* § 202(d)(6) of the Act.

F. Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended,[1] requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to require travelers entering the United States to present a passport, other document, or combination of documents, that are ''deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship.'' This DHS and Department of State (DOS) initiative is referred to as the Western Hemisphere Travel Initiative (WHTI). DHS and DOS have issued several regulations implementing WHTI travel document requirements at air ports of entry, and proposing documents acceptable for cross border travel at land and sea ports-of-entry. For additional information on the WHTI rulemaking actions, please see 71 FR 68411 (Nov. 24, 2006) (final air rule) and 72 FR 35087 (proposed land and sea rule).

As part of WHTI, the Secretary of Homeland Security has the authority to designate alternative documents that denote identity and citizenship that can be used for cross border purposes at land and sea ports-of-entry. In determining which documents should provide a convenient, low-cost alternative for U.S. citizens, particularly those residing in border states, DHS notes that State DMVs are well positioned to provide an enhanced driver's license (EDL) to meet this need. DHS is coordinating efforts to ensure that an EDL, developed to meet the requirements of WHTI, will adopt standards that REAL ID requires, as they are defined through the REAL ID rulemaking process. For an EDL to be an acceptable WHTI document for land and sea cross-border travel, it can only be issued to U.S. citizens, denote such citizenship on the face of the card, and must include technologies that facilitate electronic verification and travel at ports-of-entry. DHS will continue to work closely with interested states to develop driver's licenses that can meet both REAL ID and WHTI requirements.

The requirements outlined above constitute substantive changes between the March 2007 proposed rule and this final rule. A more robust discussion of this final rule and DHS's responses to comments are set forth below.

[1] Pub. L. 108–458, as amended, 118 Stat. 3638 (Dec. 17, 2004).

III. Section-By-Section Analysis of the Final Rule

Section 37.1 Applicability

DHS added a reference to § 202(d)(11) of the REAL ID Act to make it clear that the provisions of this rule apply to States who intend to issue driver's licenses or identification cards that can be accepted by Federal agencies for official purposes and that intend to be determined by DHS to be in compliance with section 202 of the REAL ID Act.

Section 37.3 Definitions

DHS added a definition of ''full compliance'' to clarify the relationships between full compliance with the requirements of Subparts A through D, and ''material compliance'' with the procedures in Subpart E that allow a State to file for and receive an extension.

DHS refined the definition of ''covered employees'' in this final rule to clarify that employees refers to DMV employees.

DHS added a definition of ''duplicate'' for driver's licenses and identification cards issued subsequent to the original license or card bearing the same information and expiration date as the original.

DHS has modified the definition of ''full legal name'' to bring it closer to existing name conventions used by the Social Security Administration, the Department of State, and other issuers of source documents.

DHS has added the definition of ''material change'' to provide clarity for States as to when an individual may be required to make an in-person visit to a DMV office to obtain an updated REAL ID driver's license or identification card when certain information changes from the time they obtained their previous REAL ID document. For the purpose of this final rule, a change of address of principal residence does not constitute a material change.

DHS has added a definition of ''material compliance'' as a basis for establishing the benchmarks that DHS will use to evaluate State progress toward meeting the requirements of this rule. States in material compliance with Subparts A through D of this rule will be granted a second extension until no later than May 10, 2011 to meet all the requirements of this rule.

DHS maintained the same definition of ''official purpose'' as that proposed in the NPRM and set forth in the REAL ID Act; to mean ''accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants.''

DHS also added a definition for ''personally identifiable information'' as it pertains to these rules and the REAL ID Act.

DHS changed the definition of ''principal residence'' from the location where a person has his or her true, fixed, and permanent home and intends to return, to the location where a person currently resides even if this location is temporary, in conformance with the residency requirements of the State issuing the driver's license or identification card, if such requirements exist. DHS made this change in response to comments that the prior definition would unfairly prevent persons such as military personnel or students residing temporarily in a State from obtaining a driver's license or identification card from that State.

DHS revised the definition of ''sexual assault and stalking'' to incorporate the meaning of these terms given by State laws.

DHS broadened the scope of the term ''State address confidentiality'' to allow States to cover not only victims of violence or assault, but also ''other categories of persons'' that may need to have their addresses kept confidential.

DHS added a comprehensive definition of the term ''verify'' to clarify the scope of application in the rule. The definition makes it clear that verification includes two interrelated procedures: (1) inspection to see if the document is genuine and has not been altered, and (2) checking to see that the identity data on the document is valid.

Section 37.5 Validity Periods and Deadlines for REAL ID Driver's Licenses and Identification Cards

The proposed language in § 37.5 required that all cards issued, reissued, or renewed after May 11, 2008 had to be REAL ID-compliant by May 11, 2013 in order to be acceptable by Federal agencies for official purposes. As discussed in Section II above and the responses to comments in Section IV below, DHS has determined that the following enrollment schedule will apply under this final rule: (1) Effective December 1, 2014, Federal agencies will be prohibited from accepting State-issued driver's licenses or identification cards for official purpose from individuals born after December 1, 1964, unless the individual presents a REAL ID-compliant card from a State that has certified and that DHS has determined compliance with the REAL ID Act and this final rule; and (2) effective December 1, 2017, Federal agencies will be prohibited from accepting for official purposes from any individual (regardless of age) State-issued driver's licenses or identification cards that are not REAL ID-compliant.

Section 37.11 Application and Documents the Applicant Must Provide

DHS proposed, in the March NPRM, that States must maintain photographs of individuals who applied for, but ultimately were denied a REAL ID card by the State, for up to one year. However, DHS also proposed that States must maintain photographs of persons denied REAL ID cards based on suspected fraud for ten years and reflect in the State's records that a driver's license or identification card was not issued by the State because of suspicions of fraud. In response to comments, this final rule was amended to provide a uniform photograph retention provision of five years for persons who are denied a REAL ID card, regardless of the reason that the State denies issuance of a REAL ID card. DHS has also added a provision requiring States to retain the photo for two years after expiration of the card to allow individuals to renew licenses after they have expired.

The NPRM also proposed to require, under § 37.11(b), that States retain with applicant source documents the required signed declaration that the information presented by the applicant is true and accurate. This final rule no longer requires States to retain the required declaration with the applicant's source documents, the retention of which is mandated under § 202(d)(2) of the Act. Instead, recognizing the operational burdens on the States, DHS is exercising its discretion on this matter to require only that the declaration must be retained by States consistent with applicable State document retention requirements or policies.

Under § 37.11(c), DHS has added a provision that would allow DHS to change the list of documents acceptable to establish identity following publication of a notice in the **Federal Register**.

DHS also has provided States a broader latitude to accept documents other than documents issued by a Federal or State-level Court or government agency to establish a name change. Moreover, where State law or regulation permits, the State may record a name other than that contained in the identity document on the face of the license or card as long as the State maintains copies of the documentation presented pursuant to § 37.31, and maintains a record of both the recorded name and the name on the source documents in a manner to be determined by the State.

The NPRM proposed, under § 37.11(e), that an applicant for a REAL ID card must provide documentation establishing a Social Security Number (SSN) or the applicant's ineligibility for an SSN. This final rule amends that proposed requirement to allow an applicant, if a Social Security Administration account card is not available, to present any of the following documents bearing the applicant's SSN: (i) A W–2 form, (ii) a SSA–1099 form, (iii) a non-SSA–1099 form, or (iv) a pay stub bearing the applicant's name and SSN. A State, however, must verify the SSN pursuant to § 37.13(b)(2) of this final rule.

DHS has amended proposed § 37.11(f) to give States more discretion in the acceptance of documents required to demonstrate the applicant's principal address by removing specific requirements that documents used to demonstrate address of principal residence be issued ''monthly'' and ''annually.''

In response to comments regarding demonstrating the applicant's lawful status in the United States, DHS has amended § 37.11(g) with regard to which identity documents may serve as satisfactory evidence of the applicant's lawful status. While all identity documents listed in § 37.11(c) must be verified by the State in the manner prescribed in § 37.13, State verification of some of the identity documents also provides satisfactory evidence of lawful status. Therefore, if the applicant presents one of the documents listed under § 37.11 (c)(1)(i)-(viii)(except for (v)), the issuing State's verification of the applicant's identity in the manner prescribed in § 37.13 will also provide satisfactory evidence of lawful status. State verification of the remaining identity documents listed in § 37.11(c), however, does not provide satisfactory evidence of lawful status and the applicant must provide additional documentation of lawful status as determined by USCIS.

In response to comments on the exceptions process proposed in § 37.11(h), DHS has amended this final rule to allow U.S. citizens to utilize the process to prove lawful status. In response to comments that it was unrealistic and too costly to require States to provide quarterly reports analyzing the use of their exceptions process, this proposed requirement has been replaced with a requirement that States must conduct a review of the DMV's use of the exceptions process and submit the report to DHS as part of their certification package per § 37.55. Section 37.11(h) has also reduced the information required to be maintained by the State when the exceptions process is used.

Section 37.13 Document Verification Requirements

Based on numerous comments and ongoing State DMV programs, the rule now includes the provision that the State must make reasonable efforts to ensure that the person has not been issued identification documents in multiple or different names. Identified by several responders as the top priority for reducing the number of fraudulent licenses issued, this requirement has been reformulated and moved from § 37.11 to 37.13.

In response to concerns that a number of the verification systems contained in the proposal would not be operational by the verification deadlines, the final rule gives States more flexibility in verifying documents and identity data.

DHS added language that provides that nothing in this section precludes a DMV from issuing an interim license or a license under § 202(d)(11) of the Act to permit an individual to resolve any non-match issue, but clarifies that such cards cannot be accepted for official purposes.

Section 37.15 Physical Security Features for the Driver's License or Identification Card

DHS has deleted the proposed card design standards in response to comments which stated that the standards were an undue burden on the States. DHS has added language that States must conduct a review of their card design and submit a report to DHS as part of its certification package that indicates the ability of the designs to resist compromise and document fraud attempts.

Section 37.17 Requirements for the Surface of the Driver's License or Identification Card

In response to comments that some States allow a name other than the full legal name on the identity document to be on the surface of the license, this section has been amended to require full legal name as demonstrated on the applicant's identity document, but an individual may establish his or her name with other documentation where State law or regulation permits, as long as the State maintains copies of the documentation presented pursuant to § 37.31 and maintains a record of both the recorded name and the full legal name on the identity document in a manner to be determined by the State.

Under § 37.17(d), the unique license or card identification number must only be unique to each license or card holder within the State and not unique across all the States and other covered jurisdictions.

With regard to full facial digital photographs pursuant to § 37.17(e), DHS has clarified the discussion to bring it into closer compliance with DHS, Federal and national standards. Language was added that allows photographs to be in black and white or color.

To provide States with greater flexibility in protecting confidential addresses, § 37.17(f) contains new language that allows the display of an alternative address on the license or card, if a State permits this, and acceptance of an administrative order issued by a State or Federal court to show that an individual's address is entitled to be suppressed. States may also use an address convention used by the U.S. Postal Service where a street number and street name have not been assigned.

Further, § 37.17(g) now requires that States establish an alternative procedure for individuals unable to sign their names. The requirement to use the Roman alphabet has been replaced with use of the Latin alphabet which is more common.

In response to several comments from States and AAMVA that REAL ID-compliant documents should be marked or ''branded'' as REAL ID-compliant, DHS has added 37.17(n) which requires that REAL ID-compliant licenses and identification cards bear a DHS-approved security marking in accordance with the level of compliance with the Act.

Section 37.19 Machine Readable Technology on the Driver's License or Identification Card

This section contains technical conforming changes to reflect the changes made in § 37.11(c)(2) allowing a name other than the full legal name to appear on the license or card if a State law permits. State or territory of issuance has been added to the MRZ data fields to accommodate instances where a State may not have a residency requirement or may allow use of an out-of-State address to receive a license.

Section 37.21 Temporary or Limited-Term Driver's Licenses and Identification Cards

In response to comments that the term ''temporary'' may cause confusion under current terminology practices with some DMVs, this section adds new terminology and now refers to such licenses/cards as ''limited-term or temporary.'' DHS also added language that provides that the verification of

lawful status for such licenses/cards may be through SAVE, or ''another method approved by DHS.''

Section 37.23 Reissued REAL ID Driver's Licenses and Identification Cards

In response to comments, § 37.23 now provides that States may conduct a non-in-person (i.e., remote) reissuance of a driver's license or card if State procedures permit the reissuance to be conducted remotely, except that a State may not remotely reissue a license or card where there has been any material change in information since prior issuance.

Section 37.25 Renewal of REAL ID Driver's Licenses and Identification Cards

Section 37.25(a)(2) adds language that requires the States to reverify SSN information to ensure that the applicant's information is still valid. DHS has also added explicit language requiring that the State must verify electronically information that it was not able to verify at a previous issuance or renewal, if the systems or processes exist to do so.

Section 37.27 Driver's Licenses and Identification Cards Issued During the Age-Based Enrollment Period

This section has been added to affirm the acceptability of driver's licenses and identification cards issued, reissued, or renewed prior to the end of the age-based enrollment period. For example, if an individual is 60 years of age and their license naturally expires in 2009, the State may issue that individual a license under that State's current practices, and that license will be accepted for official purposes until 2017, after which time that individual must present a license that complies with this rule for that card to be accepted for official purposes. As of December 1, 2014, individuals born after December 1, 1964 (that is, under fifty years old on that date) must present a REAL ID card when they present a State-issued driver's license or identification for official purposes. As of December 1, 2017, all individuals presenting a State-issued driver's license or identification card for official purposes must present a REAL ID card. The new section reemphasizes that an individual's driver's license will continue to be accepted for official purposes until the expiration of the individual's applicable enrollment period.

Section 37.29 Prohibition Against Holding More Than One REAL ID Card or More Than One Driver's License

In response to numerous comments to clarify the ''one driver one license'' concept in the REAL ID rules, DHS has created a stand-alone section, § 37.29, that specifically states that an individual may hold only one REAL ID card, whether it is a REAL ID identification card or a REAL ID driver's license. In addition, prior to issuing a REAL ID driver's license, a State that is complying with REAL ID must check with all other States to determine if the applicant currently holds a driver's license or REAL ID identification card in another State, and if so, the receiving State must take measures to confirm that the person has terminated or is terminating the driver's license or REAL ID identification card issued by the prior State pursuant to State law, regulation or procedure.

Section 37.31 Source Document Retention

DHS has added language to § 37.31 to reiterate the requirement that States must protect any personally identifiable information collected pursuant to the REAL ID Act as described in the Security Plan (§ 37.41).

In response to comments, DHS deleted the following requirements from this section:

- That States must replace black and white imagers with color imagers by December 31, 2011;
- That States using digital imaging to retain source documents must use the AAMVA Digital Exchange Program or a standard that has interoperability with the AAMVA standard;
- That all images must be linked to the applicant through the applicant's unique identifier assigned by the DMV; the amended requirement now states that all images must be retrievable by the DMV if properly requested by law enforcement.

DHS has also added a provision that allows States to record information from birth certificates in lieu of retaining an image or copy if State law permits and if requested by the applicant. This will protect medical and other personal information not relevant to REAL ID.

Section 37.33 DMV Databases

DHS changed the title of this section from ''Database connectivity with other States'' to ''DMV Databases.'' This section has also been amended to require that the DMV database allow capture of the full legal name and any other name recorded under § 37.11(c)(2) without truncation.

Section 37.41 Security Plan

DHS amended this section to clarify that each State submit a single security plan to address DMV facilities involved in the enrollment, issuance, manufacturing and production of driver's licenses and identification cards, rather than all State DMV driver's license/identification facilities as stated in the NPRM. This change is in response to comments that it does not enhance overall security to require every DMV office (which could be interpreted to include administrative offices) to submit a security plan and individual risk assessments.

Furthermore, in response to comments asking for clarification, § 37.41(b)(iii) now provides that the release and use of personal information must, at a minimum, be consistent with the Driver's Privacy Protection Act, 18 U.S.C. 2721 *et seq.*

This section of the final rule now indicates that the fraudulent document training requirement would be satisfied by a fraudulent document training program approved by AAMVA. DHS has also deleted the requirements that the security plan contain procedures to revoke and confiscate driver's licenses or identification cards fraudulently issued in another State, in response to comments that States have no authority to carry out such a requirement.

A new section has been added to § 37.41 to state that the Security Plans contain Sensitive Security Information and must be handled and protected in accordance with 49 CFR Part 1520.

Section 37.43 Physical Security of DMV Production Facilities

This section is unchanged.

Section 37.45 Background Checks for Covered Employees

Section 37.45(d) has been amended to recognize background checks that are similar to those required under § 37.45 and that were conducted on or after May 11, 2006, and that the DMV does not have to check references from prior employers for individuals that have been working with the DMV for at least two consecutive years prior to the Act taking effect. (The Act becomes effective on May 11, 2008). Therefore DMVs would not have to seek references from prior employers of employees who have been with the DMV consecutively from May 11, 2006 to May 11, 2008. The final rule clarifies that the waiver provision in § 37.45(b)(1)(v) allows a waiver of requirements for the determination of arrest status and includes circumstances where the individual has been arrested, but no final disposition on the matter has been reached.

In response to comments, DHS deleted the requirement that States must conduct a financial history check as part of the background check of covered employees.

Section 37.45 now requires that the State confirm the employment eligibility of the covered employee, rather than lawful status through SAVE, and recommends that the State participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

Section 37.51 Compliance—General Requirements

DHS has modified this section in response to many comments. DHS recognizes that States will be unable to meet all the requirements of this rule beginning on January 1, 2010, the day after the termination of the extension period proposed by DHS in the NPRM. For example, requirements for State verification of source documents depend upon the deployment of electronic systems that have not yet been developed. Therefore, DHS proposes that States meeting key benchmarks for progress toward compliance with the REAL ID Act be granted an additional extension until no later than May 10, 2011 to meet all the requirements of Subparts A through D. States seeking a second extension would submit a Material Compliance Checklist to DHS no later than October 11, 2009, documenting their progress in meeting the benchmark requirements. States meeting these benchmarks would also be able to issue driver's licenses and identification cards bearing security markings indicating that the license was issued in conformity with REAL ID standards.

Section 37.55 State Certification Documentation

The title of the section was amended to reflect the changes to the certification process discussed above. The required contents of the State certification have been amended in the final rule to delete the requirement for a copy of all statutes, regulations, and administrative procedures and practices related to the State's implementation program. DHS has amended the requirement that a State's governor certify compliance to read that a State's highest level official with oversight responsibility over the DMVs certify compliance. In addition, the frequency of certification reporting has been modified to be similar to the three-year intervals required by several Department of Transportation programs. Thus, in accordance, § 37.57 ''Annual State Certifications'' has been removed.

Section 37.59 DHS Reviews of State Compliance

DHS has rephrased the information requirement in the section to require any reasonable information pertinent to determining compliance with this part as requested by DHS. Also, DHS must now provide written notice to the State in advance of an inspection visit. The final rule provides that, in the event of a DHS preliminary determination that the State has not submitted a complete certification or that the State does not meet one or more of the minimum standards for compliance under this part, DHS will inform the State of the preliminary determination within forty-five days. Finally, this section now includes DHS procedures for reviewing a Material Compliance Checklist as part of the procedure for granting States an additional extension until no later than May 10, 2011.

Section 37.61 Results of Compliance Determination

The final rule now states that DHS will determine that a State is not in compliance when it fails to submit the certification as prescribed or to request an extension as prescribed in the subpart.

Section 37.63 Extension of Deadline

The NPRM was not clear on the timing of submissions for requests for extension. Although proposed regulatory text stated that requests for extension must be submitted no later than October 1, 2007; the preamble requested submission of compliance plans and strongly encouraged ''States to communicate their intent to certify compliance or request an extension by October 1, 2007.'' We clarify the deadline for submission of requests for extension in the final rule, providing that requests for extension must be submitted to DHS ''no later than March 31, 2008.'' DHS will notify a State of its acceptance of the extension within forty-five days of receipt.

This section now includes the procedure for requesting an additional extension until no later than May 10, 2011. States seeking an additional extension shall submit a Material Compliance Checklist to DHS no later than October 11, 2009, documenting the State's progress in meeting certain benchmarks. States meeting the benchmarks included in this checklist will be granted a second extension until no later than May 10, 2011.

Section 37.65 Effect of Failure To Comply With This Part

DHS amended this section to provide that REAL ID driver's licenses and identification cards issued by the State during the term of any extension will continue to be acceptable for official purposes until the card expires.

Section 37.67 Non-REAL ID Driver's Licenses and Identification Cards

This section was renumbered to § 37.71, consistent with the structure of the Part. The section was also renamed to ''Driver's licenses and identification cards issued under § 202(d)(11) of the REAL ID Act'' to further clarify that DHS interprets this section of the Act to apply only to States that certify and DHS determines are compliant with the REAL ID Act, as defined by these regulations, and that choose to also issue driver's licenses and identification cards under the Act that are otherwise not acceptable by Federal agencies for official purposes.

IV. Discussion of Comments

During the sixty-day comment period, DHS received over 21,000 comments on the NPRM. DHS received numerous requests to extend the comment period past the sixty days provided in the NPRM. DHS has carefully considered the comments and determined not to extend the comment period for the NPRM. As discussed above, under the REAL ID Act, Federal agencies will be prohibited from accepting driver's licenses or other State-issued identification cards from States that are not in compliance with the requirements of the Act by May 11, 2008, less than one year away. Given the complexity of the Act's requirements and these implementing regulations, extending the comment period beyond sixty days would serve only to delay issuance of this final rule and deprive States of the information necessary for their DMVs to begin preparations and adjust their operations consistent with the requirements of this final rule and the Act. Further, in addition to the 60-day comment period, DHS provided several opportunities for additional public participation through such events as the May 1, 2007, public meeting in Davis, California (with participation also available via webcast); and meetings with stakeholders. We determined that the 60-day comment period and additional DHS outreach during the comment period provided adequate time for the public to consider and provide meaningful comment on the NPRM.

We also received several comments that were filed well past May 8, 2007, the close of the comment period. As discussed above, given the upcoming May 11, 2008, compliance deadline and the adequacy of the sixty-day comment

period and public outreach, DHS has not accepted or considered comments that were filed after the May 8, 2007 close of the comment period. Because DHS did not extend the comment period, allowing some commenters to file late—or to provide late filed supplements to their comments—would disadvantage those commenters who did not file late and would also have preferred additional time to file comments or amend the comments that were filed within the deadline. Comments that were timely filed, but not processed immediately by DHS due to technical errors by the submitter or DHS, are not considered to have been filed late and were considered in the development of this final rule.

A. General Comments on the Proposed Regulation

1. General Comments in Support of the Proposed Regulation

Comments: Several commenters expressed general support for the proposed rule. Commenters wrote that the REAL ID program will provide a measurable and positive impact on a wide range of security matters, and that the cost estimates, methods of implementation, and the projected time frames were reasonable. One commenter wrote that REAL ID correctly specified a set of performance standards rather than listing static prescriptive standards, and that enhanced document security is essential to combat terrorists, can help improve transportation safety, and can combat identity theft or other criminal acts.

Response: DHS agrees with these commenters, and believes that States that fully implement these rules will improve national security by improving the security and reliability of a key document carried by many Americans. Both the REAL ID Act and the REAL ID regulations focus on improving the reliability of State-issued driver's licenses and identification cards and decreasing the likelihood that an individual can fraudulently obtain an identity document or alter a legitimate identity document to create a false identity. The availability of better and more reliable security documents means that government and law enforcement officials have a greater opportunity to prevent terrorists and other unauthorized persons from gaining access to commercial airplanes and Federal facilities.

2. General Comments in Opposition to the Proposed Regulation

Comment: Many commenters expressed general opposition to the REAL ID program. General comments included the following: DHS misinterpreted the REAL ID Act, the proposed rule is incomplete and problematic, adequate studies have not been conducted to determine that the program will work, the rule's requirements will lead to degradation in the level of State DMV customer service, the rule would harm citizens' privacy, and the rule requires additional Federal funding. Many commenters wrote that the rule fails to provide appropriate security, utility, or privacy and one commenter said the rule ''is inadequate to meet the intent of the REAL ID Act and the needs of the states and citizens of the U.S.'' Another commenter wrote that DHS ''could have done a better job of creating a regulatory framework that does not increase the risk of identity theft nor enable widespread governmental and commercial tracking of U.S. residents.'' Several commenters requested that DHS provide a revised NPRM reflecting comments and that DHS accept at least a second round of comments before issuing a final rule. Other commenters asked that public advocacy groups and other stakeholders be consulted to ensure the final rule properly considers citizen rights and interests. Several commenters, including States, wrote that a secure identity credential could increase fraud, identity theft, and other forms of misuse, including the ability to access confidential information, and that many security leaks would occur. Two commenters said the Federal government has an existing program, the passport program, that does everything the REAL ID is supposed to accomplish, and that it makes sense to expand the passport program rather than revamping State driver's license requirements. Other commenters wrote that an improved system of Social Security number verification is a more efficient, less intrusive system for work status verification and driver's license eligibility.

Response: DHS appreciates the many comments received; however, DHS respectfully disagrees with the comments generally opposing the REAL ID program. DHS believes that both DMVs and the American public will welcome having a more secure and reliable form of identification, and that DMVs will take the necessary steps to ensure that their customer service efforts are not degraded as a result of the regulations. DHS strongly disagrees with the proposition that the rules will lead to an increase in identity theft, harm privacy, or enable the government to track individuals in their daily lives. To the contrary, the rules create an environment where it is far less likely that an individual can fraudulently obtain a State-issued identity document using another person's identity and identity documents and minimizes the possibility that one individual can obtain identification documents in multiple names and identities. The privacy interests of driver's license and identification card applicants are strengthened, rather than weakened, since this rule requires all States to protect the personally identifiable information that DMVs collect from applicants. Establishing minimum standards for States to issue more secure licenses does not confer any ability on the government to monitor or track anyone, although it does improve the ability of the government and private sector parties to rely on the identity document an individual presents.

DHS does not believe that additional rounds of comments on the requirements proposed in the NPRM are necessary before issuing this rule. Some 21,000 comments were filed in the docket covering the full range of issues. In addition, DHS hosted a town hall meeting in California to hear directly from the public and reconstituted the groups that participated in the 2005 Department of Transportation-led negotiated rulemaking committee in order to gather input and comments directly from those groups.

DHS does not agree that a passport issued by the Department of State fulfills the same function as a State-issued driver's license. Individuals who have no intention of leaving the United States do not need to obtain a passport in order to enter another country or reenter the United States. Any of these same individuals who desire to drive would need to obtain a driver's license.

DHS also disagrees with the comment that a Social Security number (SSN) is an adequate substitute for the statutory requirement that an individual have lawful status in the United States. Mere possession of a SSN cannot replace the statutory requirement that States verify an individual's lawful status in the United States. There are individuals who are no longer lawfully present in the United States who have SSNs.

3. Cost Considerations

Comment: Numerous commenters questioned the anticipated costs of the REAL ID requirements. Specifically, commenters wrote that the costs of the REAL ID program would be ''huge,'' ''exorbitant,'' ''significant,'' or ''excessive.'' Some States wrote that estimated costs for implementing REAL ID were equal to or substantially

exceeded their current operating budgets for motor vehicle licensing. One State estimated its costs for verification and re-verification will be over $100 million in the first year; another State estimated its costs would be $19.5 million for initial expenses and $9 million a year for ongoing expenses. Another commenter suggested that the burden would be particularly heavy on small States, which would be overwhelmed by the volume of queries they would receive each day from States with large populations and which would not have funds to improve their systems to handle the query volume. Commenters identified several features of REAL ID implementation that they believed would be the most costly, including verification requirements; the requirements for issuing driver's license and identification card renewals; background checks for State personnel issuing cards; the need to upgrade computer systems; hiring additional staff; and renegotiation of existing contracts.

Response: DHS has examined both the budgetary impacts and economic impacts of the proposed rule and understands the significance of these costs for States. DHS has also reviewed various options that would reduce the disproportionate burden upon small states but have not found a feasible alternative that would provide the same benefits but at a lower cost.

DHS has also reviewed many of the high-cost options of the proposed rule and has significantly reduced both the infrastructure costs and the costs of reenrollment for States. As stated in other parts of this document, DHS agrees with an age-based approach and concludes that there is a higher risk of individuals under age fifty obtaining fraudulent identification than there is for those over this age limit.

Comment: Commenters wrote that DHS had overestimated the benefits of REAL ID and that the potential benefits did not justify the high cost of implementation. One commenter stated that cost estimates are low given that DHS has ''no clear idea of how to implement the REAL ID Act's dictates and has made some unrealistic calculations.''

Response: DHS understands that the benefits of the proposed rule on REAL ID are difficult to quantify and that there are some imperfections in the methodology. Commenters stated that DHS has overestimated the benefits when in fact it developed a ''break-even analysis.'' DHS estimated that if the requirements of the proposed rule lowered by 0.061% per year the annual probability of a terrorist attack that caused both immediate and longer run impacts then the quantified benefits of the REAL ID regulation would be positive.

This ''break-even'' analysis was based on the rule having an impact on the annual probability of the U.S. experiencing 9/11 type attacks in the ten years following the issuance of the rule. DHS believes that the probability and consequences of a successful terrorist attack cannot be determined for the purposes of this analysis. However, it was not necessary to assume that there was (or is) a probability of being attacked in any particular year. Instead, the analysis examined the reduction in the probability of an attack so that the expected cost of REAL ID equaled the expected value of the benefits. Since it is extremely difficult to predict the probability and consequences of a hypothetical terrorist attack, DHS asked what impact would the proposed and final rule have to have on the annual probability of experiencing a 9/11 type of attack in order for the final rule to have positive quantified net benefits. The analysis does not assume that the United States will necessarily experience this type of attack, but rather is attempting to provide the best available information to the public on the impacts of this rule.

Comment: Many commenters wrote that the cost of REAL ID would be borne initially by the States, and then passed on to those States' citizens in the form of higher fees for driver's licenses, higher taxes, or reduced services. Commenters wrote that higher fees would be paid by persons who need driver's licenses but who do not fly, enter Federal buildings, or go into nuclear facilities. Another commenter wrote that citizens would incur large costs to acquire the source documents needed to obtain REAL ID cards. One commenter wrote that the costs of REAL ID would drain resources from other vital public services. One commenter wrote lost income would be borne by commercial drivers and motor carriers domiciled in non-compliant States, and that the costs to commercial drivers to obtain new REAL ID commercial drivers licenses may result in reduced trucking services to Federal facilities. One commenter wrote that the DHS cost estimate of $7.88 billion over ten years would amount to a cost of $96.25 per REAL ID holder.

Response: DHS acknowledges the concerns of the individuals who commented that this rule will impose significant costs and believes that a large portion of the costs will be passed on from the States to the States' REAL ID applicants in the form of higher fees for driver's licenses. But each citizen in the United States, whether he or she has a driver's license or not will be receiving security benefits as a result of this rulemaking. For example, the 9/11 Commission believes that acceptable forms of identification will help ensure that people are properly identified. The Commission's report, which informed the basis for the REAL ID Act of 2005 said that: ''At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.''

DHS agrees that some applicants might incur added costs to acquire the source documents needed to obtain REAL ID cards but, overall, DHS has attempted to minimize the potential added costs while remaining true to the intent of the Act. People are being provided ample time to acquire any source documents that they might not have so the potential added costs will be lessened should they take advantage of this flexibility. Consequently, the added costs are expected to be small.

With regards to commercial drivers and motor carriers domiciled in non-compliant States, the commenter did not provide any useful cost data that could be included in the regulatory analysis. This was probably due to the fact that it is impossible to estimate at this time how many states would choose to not participate.

Comment: Several States wrote that the costs of REAL ID would divert money from other homeland security projects whether or not the States diverted a portion of the Homeland Security Grant Program funding, as DHS would allow them to do. States that raised the possibility of diverting twenty percent of their Homeland Security Grant funds wrote that a diversion would be impossible immediately as funds were already committed to other uses. One commenter called the use of DHS grants for REAL ID ''at best, window dressing,'' and another commenter called it ''an empty hole.'' An additional commenter identified training and equipment for rescue and first responder personnel as areas likely to suffer reduced funding. One commenter wrote that if REAL ID security measures ultimately have no effect, those spent dollars would have been spent more effectively in maintaining and strengthening proven security measures.

Response: DHS believes that some commenters may have misunderstood DHS's announcement about the use of State Homeland Security Grant Program

(SHSGP) funds for REAL ID purposes. DHS did not suggest that SHSGP funds would replace appropriated monies from Congress to help the States implement the rules and comply with the REAL ID Act. DHS and the Administration are continuing to work with Congress on the availability of additional funding to the States for these purposes.

All homeland security funding decisions require trade-offs among various competing priorities given the available funding. The 9/11 Commission Report noted that fraudulently-obtained identification is equivalent to a weapon in the hands of a terrorist.

4. Unfunded Mandate Reform Act

Comment: Numerous commenters wrote that REAL ID is an unfunded mandate. The American Association of Motor Vehicle Administrators (AAMVA) wrote that past and proposed Federal budget submissions had fallen far short of securing necessary funding for both the Federal government and the States to implement REAL ID. More than twenty-seven States called for Federal funding of the REAL ID program. Two States suggested that Federal funding for REAL ID not be in the form of grants for which a State would have to submit applications, but rather be either a block grant or set-aside match for State funds. AAMVA wrote that because eighty percent of a SHSGP funding must be passed along to local governments, in fact a much smaller percentage of available DHS funding will be available to each State for REAL ID implementation.

Response: As discussed elsewhere in this preamble, DHS is adopting a more flexible approach for States to implement the requirements of REAL ID, including a second extension period and age-based enrollment. This approach will permit States to spread out implementation costs over a greater period of time. Congress has appropriated $40,000,000 in grant funding to the States. These grants will be made available to the States through both categorical and competitive grants. In addition, States may utilize up to 20% of their SHSGP funding. This combination of funding, flexibility and phasing provides the relief that States and other commenters are seeking.

5. Privacy Concerns

Comments: Several States and many other commenters expressed concerns about threats to the privacy of State residents who apply for REAL ID cards once the requirements are implemented. Commenters also expressed concern for the privacy of DMV employees who would be subject to background screening. Some commenters wrote that any privacy requirements must adhere to those of the Driver Privacy Protection Act and applicable State laws. Other commenters urged DHS to encourage States to meet agreed-upon privacy and security requirements. Another commenter asked that privacy and acceptable use policies address State DMV information systems, equipment, employees, and contractors. One commenter wrote that the regulations omit crucial privacy and security protections to the point that the proposed rule conflicts with Federal privacy and security principles. Several commenters were concerned about privacy protection for immigrants, ethnic minorities, and others who might be discriminated against based on use of the REAL ID.

Response: DHS understands that commenters have many concerns that implementation of the REAL ID Act may impact the privacy of driver's license and identification card holders and their personally identifiable information. DHS recognizes, however, the importance of privacy protection and has sought to address privacy in a comprehensive manner. First, the final rule requires a minimum of information to be collected by the States to verify identity for issuance of a license or identification card and a minimum of information to be printed on the card and in the machine readable zone.

Second, the final rule requires the States to file, as part of the certification process, a security plan that explains how the State will protect the personally identifiable information collected, stored, and maintained in DMV records or information systems including a privacy policy.

In addition to this rulemaking, DHS intends to issue a set of Privacy and Security Best Practices that are built on the Fair Information Principles and Federal Information Security Management Act (FISMA) standards to help guide the States in protecting the information collected, stored, and maintained pursuant to the REAL ID Act.

DHS plans to include the following elements in its Privacy and Security Best Practices: Issuing a clear and understandable privacy policy to each card holder; providing individual access and correction rights for card holders; specifying the purpose for collecting personally identifiable information in the privacy policy and limitation of the use to those purposes; limiting the information collected for those purposes; limiting disclosure of the information except to a governmental agency engaged in the performance of official responsibilities pertaining to law enforcement, the verification of personal identity, or highway and motor vehicle safety, or a third party as authorized under the Driver's Privacy Protection Act; requiring data quality standards and security safeguards to protect against loss or unauthorized access, destruction, misuse, modification, or disclosure; performing a Privacy Impact Assessment (PIA) to identify and analyze how personally identifiable information related to implementation of the REAL ID Act is collected, used, maintained, and protected; and establishing accountability for compliance with the State's privacy and security policies to ensure that these best practices are fully implemented.

Finally, DHS recognizes that States will also be guided by their own privacy laws, which may provide greater protections and are not preempted by the REAL ID Act.

6. Concerns With the REAL ID Act Itself

Comments: Many commenters wrote that the REAL ID Act has deficiencies that the regulatory process cannot cure. One State asked DHS to work with States to identify problematic statutory components and to seek Congressional amendments to facilitate a ''rational and funded approach for implementation.'' Some commenters wrote that the rule sets no clear minimum standards for States to follow. A commenter wrote that there were no hearings or Senate floor debate on the REAL ID Act; another commenter wrote that DHS held only one town hall meeting before the comment period ended. One commenter asserted that the development process did not recognize its tribal entitlement to meaningful consultation regarding the REAL ID regulations.

Response: DHS was charged to issue regulations to implement the law that Congress enacted. DHS held extensive consultations with the States during the development of the NPRM and during the public comment period, and the Town Hall meeting held in California during the comment period was published in the **Federal Register** and available via the Web to a national audience. Over 21,000 comments were filed in the docket. While additional individuals may have preferred to express their comments orally at town hall meetings, DHS believes that the scope and breadth of the comments filed adequately informed DHS on the issues of concern to the commenters. DHS does not believe that the tribal consultation obligations required by Executive Order 13175 were triggered in this rulemaking, as this final rule will not have a

substantial direct effect on one or more Indian tribes and will not impose substantial direct compliance costs on Indian tribal governments. Further, tribal governments will not be substantially affected as tribal members are licensed through State agencies.

7. DHS Acting Outside the Scope of Its Authority

Comment: Several commenters wrote that DHS is acting outside the scope of its authority, and cited several examples, including requiring States to conduct various document verifications, requiring States to implement motor vehicle facility security plans, and requiring States to revoke licenses collected by other States. Two States commented that requiring background checks for employees other than those engaged in manufacturing REAL ID cards was outside the scope of authority and interferes with employee collectively bargained rights. Several commenters wrote that the REAL ID Act constitutes a delegation of licensing authority to DHS. Another commenter wrote that Congress only intended to exclude illegal aliens from eligibility to obtain a REAL ID.

Response: The REAL ID Act provides the Secretary of Homeland Security with authority to issue regulations necessary to implement the requirements of the Act. DHS understands that there is a balance between Executive discretion in interpreting the REAL ID Act through regulation, while also respecting the State's autonomy to govern an inherently State function—the driver's license issuance process. DHS has attempted to preserve State autonomy wherever possible, while remaining consistent with the Act, and believes these regulations represent a logical interpretation of the Act and Congressional intent.

8. Constitutional Concerns

Comment: Several commenters wrote that requiring a REAL ID for access to Federal courts may raise Constitutional issues for litigants, jurors, attorneys, witnesses, media, and the public. Another commenter wrote that requiring REAL ID for accessing Federal ports will have consequences for intrastate licensees attempting to conduct business.

Response: DHS does not believe that the REAL ID Act or the implementing regulations will impede the public's Constitutional rights. Once REAL ID is in effect, an individual presenting a driver's license to access a Federal courthouse must use a REAL ID driver's license to do so. However, that individual may present other documents, or may not be required to present identification at all, depending on the courthouse's pre-existing identification policies.

Comment: Several commenters wrote that the REAL ID rules would impermissibly commandeer and coerce State governments in service of a Federal objective and would prohibit Congress from exercising its Commerce Clause powers. One commenter wrote that courts have long recognized that licensing of drivers is a traditional State police, health, and safety function, and under the Tenth Amendment, such State authority generally is not subject to encroachment by the Federal government.

Response: DHS recognizes both the important national interest in secure identity documents and the Federalism implications of the policies which underpin this rule. Accordingly, DHS has welcomed and encouraged State participation in this process and, where possible, drafted these rules in such a way as to maximize State discretion. Where the exigencies of national security and the need to prevent identity fraud have militated in favor of a uniform national standard (*e.g.*, baseline security features on identity cards and background check requirements), DHS has, as reflected above, consulted with States in order to ensure that the uniform standards prescribed could be attained by the States and would reflect the accumulated security experience of State motor vehicles administrations.

Comment: Some commenters wrote that the REAL ID Act and regulations violate the Constitutional right to travel freely from one State to another by denying citizens in non-compliant States the right to board any plane, interstate bus, or Amtrak train. Other commenters wrote that government initiatives conditioning the ability to travel upon the ''surrender of privacy rights'' require particular scrutiny. One commenter wrote that the situation is acute for residents of Hawaii or Alaska who often have no choice but to travel via Federally-regulated modes of travel.

Response: DHS does not agree that the REAL ID Act will hinder individuals' rights to interstate travel. The REAL ID Act states that a Federal agency may not accept State driver's licenses or identification cards for official purposes unless a State is meeting the requirements of the Act. At this time, the definition of ''official purposes'' includes boarding Federally-regulated commercial aircraft; no other form of transportation is included. Moreover, travelers will be able to use identification other than a REAL ID driver's license to board an aircraft. While Federally-regulated commercial aircraft are a mode of transportation, the Act only prohibit Federal agencies from accepting a non-REAL ID license or card where a State-issued driver's license is presented by the individual. Where individuals are allowed to board aircraft or enter Federal facilities with documents other than a State-issued driver's license or identification (such as a passport or military identification card), neither the Act nor these rules change those processes and procedures. Further, an individual with a State-issued non-compliant driver's license or identification card may travel interstate or intrastate in a commercial motor carrier, Amtrak train, ship, individual automobile, or any other mode of transport aside from Federally-regulated commercial aircraft. These transportation options illustrate that individuals' rights to travel are not substantially impeded.

Comment: Several commenters and States expressed concern with a State's lack of authority to request or demand that other jurisdictions correct erroneous records about individuals and that there is no easily available process for resolving errors. A number of commenters wrote that the lack of a process for correcting errors in the REAL ID Act violates both procedural and substantive due process under the Fifth and Fourteenth Amendments. One commenter expressed concern with the requirements that licensing authorities maintain for ten years the name and photograph of individuals denied licenses because of suspicion of attempting to obtain a fraudulent license.

Response: DHS recognizes that the provision of redress is an important element of any credentialing program. Applicants need a process by which they can access their records, correct errors, and obtain due process if denied a card. States already provide such a redress process for driver's license applicants. Generally, State DMVs direct applicants to the appropriate Federal agency, SSA, to resolve SSN verification issues or to USCIS to resolve immigration status verification issues. SSA and USCIS have redress programs in place to assist individuals whose records are incomplete or inaccurate. State-to-State record checks are also done routinely, and when an applicant needs to access his or her out-of-State DMV record, the applicant must make the request directly to the State DMV. DHS will work with the States to inform the public of their ability to access and correct DMV records as well as records

held in the various Federal data verification systems used to implement this rule.

The ten-year retention period proposed in the NPRM for the photograph and identity of individuals denied a license has been reduced in the final rule to five years. This limited retention is necessary to enable State DMVs to reduce the incidence of individuals who shop among DMVs until one issues a license.

Comment: Three commenters wrote that there is no due process in instructing DMVs to refer an applicant to the local USCIS office when there is a non-match through SAVE. There may be no local USCIS office, and a non-citizen has no straightforward route to review and correct their records and USCIS lacks jurisdiction to correct errors made by different immigration agencies. One commenter wrote that only through the FOIA process can an immigrant gain access to his or her immigration records, and that tens of thousands of FOIA requests are currently pending.

Response: DHS disagrees that there is a lack of effective due process or redress when there is a non-match through SAVE. An individual who believes that information about him or her in SAVE is inaccurate, can schedule an appointment online with USCIS at *www.uscis.gov* and be assigned an appointment at the appropriate USCIS office based on the individual's residential zip code. These appointments afford an opportunity to meet with an Immigration Officer face-to-face to resolve any non-asylum related issues relating to a current or pending immigration case. Minimal information, including an Alien Registration Number or Receipt Number is required to schedule an appointment.

Comment: Several commenters wrote that REAL ID has the potential for fostering discrimination, particularly against non-citizens. One commenter urged DHS to ensure REAL ID-compliant cards are all accepted equally, without ''geographic discrimination.'' One commenter wrote that REAL ID will cause discrimination against U.S. citizens who ''look'' or ''sound'' foreign. This commenter wrote that DMV employees must make subtle judgments about who is a citizen. Another commenter wrote that non-citizens and foreign nationals who are in the United States for work or study will be singled out and that renewing a document will be difficult because DMV employees will not understand the complexities of immigration law. One commenter urged DHS to promulgate rules prohibiting discriminatory behavior and creating penalties for DMV staff who discriminate against individuals.

Response: DHS believes that the States will take adequate measures to prevent discrimination and is unable to create private rights of action for the behavior of DMV employees. DHS disagrees that citizens will be treated differently based on their ''looks'' or ''sounds'' since all persons seeking to obtain a REAL ID-compliant driver's license or identification card have to establish their identity, date of birth, and lawful status in the United States. Furthermore, State DMVs already work with immigration documents and questions of citizenship and immigration status under their applicable State laws and have developed increasing familiarity with this subject already, without evidence of discriminatory practices in so doing.

9. REAL ID Will Not Make the Nation Safer

Comment: Commenters wrote that terrorist intentions cannot be predicted based on identification and that REAL ID will not prevent determined bad actors from using a compliant REAL ID to gain access to Federal buildings, nuclear facilities, and aircraft. A number of commenters wrote that it is not clear whether REAL ID will enhance the nation's security or create new opportunities for those seeking to exploit the nation's security. Commenters also wrote that centralization of personal data would create a greater security risk and may raise demand and value of a counterfeit document. Some commenters wrote that the proposed regulations would not have prevented the 9/11 terror attacks since all but one of the hijackers could still have obtained a State driver's license. One commenter said that REAL ID is predicated on a flawed belief that only ''outsiders'' intend to harm the United States, yet U.S. citizen ''insiders'' have committed terrorist acts.

Response: The commenters are correct that the REAL ID rules cannot completely eliminate the possibility that an individual will commit an act of terrorism inside the United States. However, by improving the security and reliability of State-issued identification documents, the rules substantially increase the ability of the government and law enforcement to identify with greater accuracy an individual at a check point or screening opportunity. Furthermore, the rules minimize the possibility of an individual possessing multiple documents, as some of the 9/11 terrorists did. The 9/11 Commission and Congress have concluded that this ability may prevent or deter future acts of terrorism.

It is incorrect to assume that the REAL ID rules could have had no impact on the 9/11 terror attack. As described in great detail in the 9/11 Commission Report, the ability of the terrorists to easily obtain multiple, legitimate identity documents facilitated their ability to move about the country and to board the ill-fated aircraft with minimal scrutiny. Under this final rule, it will be significantly more difficult for an individual to use a false name or provide fraudulent documents to obtain an identification that can be used for purposes of boarding a commercial airplane. Therefore, the final rule makes it less likely that a terrorist could circumvent watch-list screening processes and security procedures (as upgraded or developed post-9/11) and board a commercial airplane.

Further, several of the terrorists no longer had lawful status in the United States. Under the REAL ID Act and this final rule, those individuals would now be unable to obtain REAL ID driver's licenses or would only obtain a temporary driver's license that clearly indicates on its face an expiration date tied to the expiration of the holder's status.

10. REAL ID Will Result in Persons Driving Without Licenses and Auto Insurance

Comment: Several commenters wrote that REAL ID, and the weeks it can take to collect documents needed to replace lost or stolen licenses, would result in illegal immigrants driving without a license and auto insurance, and this would present health and safety risks on the roadways.

Response: DHS does not believe that the implementation of the REAL ID requirements will result in persons, particularly illegal aliens, driving without a license and auto insurance any more than may already be occurring. Most States already require the collection and submission of particular documents in order to replace lost and stolen licenses.

11. REAL ID Will Place a Heavy Burden on State DMVs

Comment: Many States and AAMVA wrote that if States are to maintain their present levels of service while incorporating REAL ID, they will need to hire additional employees, increase service hours, expand or increase facilities to accommodate customer volume, purchase additional equipment to support personnel, create and implement public education campaigns

to inform customers, and anticipate and handle increases in customer inquiries. The commenters recommended several DHS actions, including coordinating between DHS and DOT's Federal Motor Carrier Safety Administration (FMCSA) to reassess their approach to funding REAL ID requirements; prohibiting Federal agencies from charging transaction fees for verification; coordinating among DMVs, the National Association for Public Health Statistics and Information Systems (NAPHSIS), and State vital record agencies to provide reliable data and acceptable fees; requiring States to employ electronic verification systems only as they become available; and consolidating and synchronizing system development schedules. Other commenters recommended changes to the enrollment and renewal processes, including allowing for waivers of verification requirements for certain categories of persons whose identification had already been vetted by the Federal government, allowing transfers of authorization from State to State of persons with valid REAL ID identification cards, and exempting certain segments of the population from REAL ID requirements.

Response: Based on these comments, DHS is taking several measures to reduce the impact of the rule. First, States meeting specific DHS benchmarks for progress toward REAL ID compliance will qualify for additional extensions until no later than May 10, 2011. Second, DHS is adopting an age-based approach to REAL ID implementation. The rule requires individuals born after December 1, 1964 to enroll and receive REAL ID cards prior to December 1, 2014, in order for those cards to be accepted for official purposes. Individuals aged fifty or older on December 1, 2014 will not be required to enroll until December 1, 2017. After December 1, 2017, all individuals will have to possess REAL ID cards in order for those cards to be accepted for official purposes. This timeline will substantially reduce the impact of REAL ID on DMV operations and budgets.

Comment: Many States and commenters wrote that REAL ID will significantly increase service times at DMVs, resulting in a degradation of service. AAMVA estimated that DMV workloads will increase by 132 percent and that transaction times for license renewals will double. One commenter wrote that central issuance would impose considerable burdens on citizens of rural, low-density states. Several States wrote that the inability to use the Internet would impose a significant burden on DMV operations; one State wrote that the elimination of telephone and mail-in address changes would force approximately 400,000 additional persons into its DMV offices. Commenters also wrote that State DMVs will be required to add new staffing and infrastructure and, at the same time, replace or reconfigure their existing offices. States commented that hundreds of new employees will need to be hired and new costs incurred to obtain fingerprinting and background and financial checks of DMV staff. A few States noted that they will have to renegotiate contracts for services such as card printing or purchase new printers.

Response: DHS understands the commenters' concerns and agrees that forcing the entire driver's license and identification card holder population into a compressed timeframe would likely result in increased DMV service times and a general degradation of services. The final rule permits, for example, additional time for enrollment, remote license transaction processing, and eliminates the necessity of in-person DMV visits for address changes. Further, there is no requirement for financial background checks or central issuance of licenses, although a number of States have adopted central issuance as a best practice.

Comment: Several commenters wrote that State DMV officials will require extensive training in recognizing the many types of immigration documents and statuses that applicants may present. One commenter wrote that REAL ID would change State DMVs ''into a wide-ranging enforcement agent of the Federal government in areas from immigration rules to Social Security fraud.'' Commenters also wrote that State DMVs will be required to add new staffing and infrastructure and, at the same time, replace or reconfigure their existing offices. A few States noted that they will have to renegotiate contracts for services such as card printing or purchase new printers.

Response: DHS disagrees that the REAL ID Act or its implementing rules would result in DMV employees acting as enforcement agents. The rules require that the DMV issue compliant licenses only to individuals lawfully present in the United States and whose Social Security Number can be verified with the Social Security Administration. DHS also believes that the rules simplify the handling of immigration-related issues, which DHS concedes is a very complicated area. DMV officials are required to verify a non-citizen's lawful status with DHS. The SAVE system administered by USCIS permits DMVs ''one stop shopping'' to verify an individual's lawful status in the United States. Furthermore, many States provide extensive document training to their personnel to assist in identification and authentication of valid documents. Furthermore, State DMVs already work with immigration documents and questions of immigration status under their applicable State laws and have developed increasing familiarity with this subject.

Comment: Commenters wrote that State DMVs will be required to undertake other activities that they do not currently perform. One State wrote that by some State laws, driver's licenses and State ID cards are issued by two separate government agencies. Several States said they would need to acquire new or enhanced records management systems. Other States wrote that they will have to physically rearrange their facilities to comply with the REAL ID requirement to maintain a photo of everyone who applied for a license.

Response: While there may be activities DMVs may now need to perform in order to issue more secure driver's licenses and identification cards under REAL ID, Congress determined that these activities are necessary in order to ensure more secure and reliable forms of identification. Understanding that these new functions may cause strain on some DMV facilities, the final rule provides flexibility and additional time for states to implement these activities.

12. Those Without Access to Required Documents

Comment: Several commenters wrote that REAL ID would impose significant burdens on low-income individuals in the form of significantly higher fees for licenses and ID cards, higher additional costs to obtain necessary underlying documents, and extra time from work, potentially involving lost wages, to apply for REAL ID cards. One commenter wrote that a consequence of these burdens could be a likely increase in counterfeited ID cards and large numbers of individuals who lack Federally-compliant identification. Several commenters stated that certain groups would be unfairly affected by the requirement to produce certain documents, including foreign nationals, Native Americans, domestic violence victims, the homeless, the elderly, and military personnel. In addition, commenters described circumstances that could impede individuals' access to required documents, such as natural disasters.

Response: DHS believes that the REAL ID Act does not have a

disproportionate impact on certain groups. There is no evidence that many of these groups lack the documents required to establish an individual's name, date of birth, SSN, and lawful status. Should States determine that the economically disadvantaged individuals are experiencing a hardship in obtaining the necessary documents or cannot afford the license fee established by the State, nothing in the rule precludes a State from offering the driver's license or identification card or copy of a birth certificate at a reduced cost or waiving the fee altogether. In addition, the final rule enables States to establish an exceptions process for a variety of situations and circumstances, including circumstances where a particular suite of documents are unavailable following a natural disaster.

13. REAL ID Will Be a Burden to End-Users

Comment: Two commenters wrote that the responsibility for validating REAL ID cards is a government function and should not be delegated to air carriers. Instead, DHS should provide ''readers,'' similar to those used by Immigration and Customs Enforcement, for use at airports. Two commenters requested the rule make clear that the current option regarding individuals submitting to a more extensive physical search rather than showing ID before passing through airport security will not be affected by the REAL ID Act.

Response: Neither the NPRM nor this final rule govern what documents should be accepted or procedures followed at airports and Federal facilities when an individual is unable to present a REAL ID-compliant document as his or her form of identification. DHS does not agree with the comment that validating a REAL ID is exclusively a government function, and believes that a wide variety of entities would want to validate a REAL ID document before accepting it as a valid form of identification.

Comment: Another commenter asked how end-users could continue routine functions if, after 2013, State-issued driver's licenses do not meet REAL ID standards, since REAL ID would be required for access to nuclear facilities. If a State is not in compliance or elects not to participate in the REAL ID program, access by persons with licenses from those States would be prohibited, and the ability of the plants to function could be seriously impaired. A commenter mentioned that an access authorization program supervised by the Nuclear Regulatory Commission is already in place. One commenter wrote that while commercial nuclear power plants are licensed by the NRC, they are privately owned and operated and security is the responsibility of the owner/operator, not the Federal government; therefore, they should be exempted from the final rule requirements.

Response: Since the REAL ID Act specifically included access to a nuclear facility as an example of an ''official purpose,'' DHS cannot simply exempt nuclear power plants from the scope of the rules. DHS agrees with the commenter that access authorization programs supervised by the Nuclear Regulatory Commission may provide sufficient safeguards concerning access to nuclear facilities. The NRC-supervised programs may set forth alternative procedures or acceptable forms of identification for persons seeking access to a nuclear facility; however, if an individual is presenting a driver's license or State-issued identification card, it must be REAL ID-compliant pursuant to the REAL ID Act.

Comment: One commenter expressed concern about the impact of REAL ID on commercial truck drivers, and suggested that drivers without REAL ID identification cards would be far less valuable to carriers. One commenter wrote that motor carriers domiciled in non-compliant States would be at a severe disadvantage in finding drivers, and commercial drivers themselves will have to absorb the additional costs of REAL ID, including increased fees to obtain licenses and lost income.

Response: Any additional fees that DMVs may charge to obtain a REAL ID document will not fall disproportionately on commercial drivers. Nothing in the rules precludes companies employing commercial drivers from subsidizing the costs incurred by the drivers they employ. Furthermore, a REAL ID driver's license is not the sole document a commercial driver could use to access a Federal facility. Since a Federal facility may accept other forms of identification or establish alternative procedures to admit individuals with non-compliant licenses to Federal facilities, DHS does not believe that commercial driver's license holders will be disadvantaged by living in a State that chooses not to comply with the REAL ID requirements.

B. Scope, Applicability, and Definitions

Comment: Two State commenters and the AAMVA requested clarification of the terms verification, authentication, and validation. Two commenters asked for a clear definition of the term ''Federal facility.'' One commenter wrote that it is a statutory requirement to consult with the U.S. Department of Transportation in developing new definitions for driver licensing terms. Commenters also requested clarification regarding what age individuals will be required to obtain a REAL ID. It was suggested that the age requirement should be consistent with the age airlines require passengers to have their own identification documents. One commenter expressed the need to inform the public, in detail, how individuals will be impacted by not obtaining a REAL ID.

Response: DHS agrees that the term ''verification'' should be clarified. The final rule defines ''verify'' to include two processes: Ensuring that the source document is genuine and has not been altered and that the identity data contained on the document are valid.

DHS does not believe that the term Federal facility needs further definition and cannot predict how individuals without a REAL ID-compliant driver's license or identification card (either through their own choice or because a State does not issue compliant documents) will be impacted. DHS notes that individuals without a REAL ID-compliant document will still be able to enter Federal facilities and board commercial aircraft, and these rules cannot determine what alternative documents are acceptable for those purposes. DHS believes that each State can determine the appropriate minimum age to issue a REAL ID-compliant driver's license or identification card to its residents and does not believe that a single Federal standard is necessary in this area.

1. Definition of ''Official Purpose''

Comment: Two States wrote that since many Federal areas require identification, all ''official purposes'' must be clearly stated in the rule so that States can make informed decisions on whether to be REAL ID-compliant based upon the impact on the State budget versus the negative convenience impact on its citizens. Numerous commenters wrote that the definition of ''official purpose'' captures the requirements of the REAL ID Act and they are opposed to expanding the definition. Commenters stated that, should DHS decide on expanding the definition of ''official purpose,'' it should not be done without an open comment period. One commenter wrote that DHS has arbitrarily chosen to restrict the required presentment of REAL ID-compliant documents to a much smaller set of official uses than was contemplated by Congress, and this contradicts and undermines DHS's statutory mandate to enforce Federal immigration law. One State suggested that DHS create a list of

applicable Federal facilities. One commenter voiced concern over possible expansion of the definition to include Federally licensed firearms dealers and that residents of non-compliant States could be blocked from purchasing firearms. One commenter encouraged DHS to consider all the ways in which REAL ID could be used and not limit it to boarding of Federally-regulated commercial aircrafts, entering of Federal facilities, and nuclear power plants.

Response: DHS agrees with those commenters who noted that the proposed definition of ''official purpose'' is consistent with Congressional intent. DHS is neither expanding nor limiting the definition further in this rule. DHS will continue to consider additional ways in which a REAL ID license can or should be used and will implement any changes to the definition of ''official purpose'' or determinations regarding additional uses for REAL ID consistent with applicable laws and regulatory requirements. DHS does not agree that it must seek the approval of Congress as a prerequisite to changing the definition in the future (except of course to remove one of the three statutorily-mandated official purposes) as § 201(3) of the Act gives discretion to the Secretary of Homeland Security to determine other purposes.

DHS does not intend that a REAL ID document become a de facto national ID based on the actions of others outside of DHS to limit the99ir acceptance of an identity document to a REAL ID-compliant driver's license or identification card.

Comment: Commenters proposed other acceptable documents, including over-the-counter interim identification cards and tribal identification documents that should be accepted for official purposes. Another State noted that Canadian citizens drive to the United States and fly out of local airports and that it would benefit them economically to accept Canadian passports as identification cards for Federal purposes. AAMVA wrote that for States choosing not to comply with REAL ID, an alternate form of identification is essential to ensure that commercial carriers and drivers who deliver to Federal facilities continue to have unimpeded access to these facilities and that interstate commerce is not impeded. One commenter wrote that tribal ID issues must be incorporated into the regulation at the outset. One commenter wrote that DHS's disallowing of Transportation Worker Identification Credential (TWIC) as an alternative to a REAL ID document because of ''slow progress'' in implementing the TWIC program will be invalid if DHS extends REAL ID implementation. The commenter suggests permitting use of TWIC because like REAL ID, TWIC also is a Federally-vetted identification card.

Response: As noted in other responses, the REAL ID rule does not control what other, if any, alternative documents can be accepted by Federal agencies where an individual seeks to present an identification document other than a State-issued driver's license or identification card (which, under the Act and this final rule, must be REAL ID-compliant).

2. Other Definitions

Comment: One State asked for several amendments to the rule definitions. Specifically, the State asked that ''ability to affect'' be clarified to mean ''direct ability to affect''; that digital photograph should read as ''a digitally printed color reproduction of the face of the holder of the license or ID card''; that a definition be added for foreign passports; clarification that providing a foreign passport with a valid visa is an acceptable document for validating a REAL ID; clarification that ''principal residence'' is not a residency requirement, but merely defines principal address; and clarification that Secretary means ''Secretary of the U.S. Department of Homeland Security.'' AAMVA suggested that the term ''reissued'' be amended to include ''only when material changes are required such as name changes.''

Response: DHS agrees that the term ''principal residence'' needs additional clarification and has defined the term in the rule to mean the location where a person is currently domiciled (i.e., presently resides even if at a temporary address) in conformance with the residency requirements of the State of domicile, if such requirements exist. DHS agrees with the comment regarding material changes and the rule now states that a State may conduct a remote reissuance if State procedures permit as long as there has been no material change in the applicant's information since prior issuance. DHS believes that the definitions of ''ability to affect'' and ''foreign passport'' do not need further clarification. DHS decided against the proposed definition of ''digital photograph'' since certain high-security features work best with a black and white photograph and DHS does not want to preclude States from using such technology to secure their licenses.

C. Compliance Period

Comment: Many commenters, including at least twenty States and AAMVA, wrote that the compliance period is too short and is impossible to meet. Specific reasons cited for why the compliance period is too short included the following: The compliance deadline fails to take into account the States' cycles for valid driver's licenses and identifications; systems that DMVs must use to verify documents under REAL ID either do not exist or are not operational; the compliance deadline compels States to take on the unfunded expenses of hiring and training more staff and making significant infrastructure changes, waiting times for customers at DMVs will increase, the compliance deadline reflects a failure to understand how State legislatures work and how complex the process is for issuing State driver's licenses and identification cards, and compliance deadline leaves insufficient time for States to appropriate funds for the cost of implementing REAL ID. Commenters also wrote that States have no incentive for requesting such extensions, and several State legislatures have declined to even attempt compliance with the Act or the rule.

Response: DHS agrees with the commenters that States would be unable to fulfill the entire range of REAL ID regulatory requirements by May 11, 2008. Therefore, DHS is taking several measures to reduce the impact of the rule. First, States meeting specific DHS benchmarks for progress toward REAL ID compliance will be granted additional extensions until no later than May 10, 2011. Second, DHS is adopting an age-based approach to REAL ID enrollment and will only require individuals born after December 1, 1964 to enroll by December 1, 2014, in order to receive cards acceptable for official purposes on December 1, 2014. Thus, individuals aged fifty or older on December 1, 2014, will not be required to be enrolled until December 1, 2017. These measures will substantially reduce the impact of REAL ID enrollment on DMV operations and budgets.

DHS has chosen this approach as the most effective and expeditious way to achieve the purposes of the Act. DHS believes that this approach balances the strong national security objective of improving the reliability of identification documents presented for official purposes, including the boarding of commercial aircraft, with the needs of the States to spread out their compliance costs over a greater period of time and to obtain the

necessary legal and budgetary approval from within their State to comply with the regulations.

Comment: Many commenters and States did not agree on the proposed compliance period and suggested additional ideas, from basing the compliance period on the natural license expiration date to extending compliance through 2018. Two commenters wrote that a six-month planning deadline after possible publication of a final rule is unrealistic, and once there are operational systems available to all jurisdictions for implementing REAL ID, States should have at least one year to connect to those systems before issuing compliant cards. Other commenters suggested delaying the full implementation date by some other term of years commensurate with State driver's license renewal periods. Another commenter wrote that State legislatures need two years after issuance of a final rule to enact enabling legislation. One State suggested a four-year compliance delay, as the State has a lack of funding; other States proposed a delay of five years following final rule publication because those States will not complete legislation and budget actions before that time. One commenter wrote that the compliance date would result in every State requesting a waiver and compressing the enrollment process from five years to something less. AAMVA suggested a ten-year compliance period, to 2018, and also recommended that DHS avoid setting the implementation period until there are systems for verification accessible in all jurisdictions.

Response: As noted above, DHS agrees that the compliance date should be extended and therefore has extended the enrollment deadline to December 1, 2014, for drivers after December 1, 1964 (that is, under age fifty), and to December 1, 2017 for all other drivers as described above.

Comment: Commenters wrote that DHS should permit States to grandfather into REAL ID compliance those individuals who have held a driver's license for ten years. Another commenter wrote that DHS should give States the flexibility to delay re-verifying certain populations so that States maximize their resources and avoid severe service disruptions. Where a State can verify customer data before issuing a license or identification document, DHS should permit States to use ''alternative renewal processes'' during the REAL ID enrollment period. Another commenter wrote that a State should be able to waive verification requirements for members of the military, Federal employees, and passport holders who already have been through a Federal vetting process. Another commenter proposed grandfathering in any State that can demonstrate that its process for issuing driver's licenses or identification documents is similar to REAL ID.

Response: The REAL ID Act does not authorize Federal agencies to accept non-compliant cards from specific age groups or other populations through a grandfather clause. DHS, as discussed above, recognizes the operational burden on States if they were required to reenroll all licensed drivers by the initial proposed enrollment date of May 2013. DHS has determined, based on comments received requesting deferments or exemptions for populations based on age and a statistical analysis of TSA incident report data, that an age-based enrollment would provide States with the most reasonable implementation options.

DHS has determined that, based on TSA incident report data it has reviewed, that a logical dividing point for age-based enrollment would be fifty years of age. As a result, the rule requires the States to focus first on individuals born after December 1, 1964, when issuing REAL ID cards. These individuals will be under fifty years of age on December 1, 2014. DHS has determined that deferring the REAL ID enrollment requirements until December 1, 2017, for those individuals born on or before December 1, 1964, will relieve the States of some operational burden associated with re-licensing their license holders. This provision will enable States to extend the enrollment of this lower-risk population until December 1, 2017.

This approach is based on a review of several data sets that correlated age and the propensity to commit a terrorist act and age and the likelihood to commit a criminal act.

Depending on the specific data set examined, different age cutoffs starting at the age of thirty-five would be appropriate for the REAL ID final rule. Of the several data sets that were examined, the best data set is one from TSA, because it is the only one that shows a correlation between activities occurring within TSA's purviews, an incident resulting in a arrest, the age of the individual and the use of a fraudulent identification.

For this final rule, data was collected and analyzed on the total number of TSA incidents involving the use of fraudulent identification representing the time period from October 1, 2004 through July 25, 2007. The data was then sorted and those potential incidents involving the use of a fraudulent identification (using the key words fraud, false, fake, and ID) were extracted. Each incident report was read and those incidents that were not germane to the REAL ID rulemaking were purged. Finally, DHS, using both the raw data as well as the calculated rates (based on the number of individuals flying), grouped the incidents into different age groups. The results were a data set that correlated one of the primary requirements of this rulemaking (the need to present an appropriate identification prior to boarding an airplane) to the use of a fraudulent identification by the age of an individual.

A total of 98 incidents of where an individual was arrested that involved the use of a fraudulent identification was included in this group. The age of the individuals arrested was available for 86 of the arrests. The weighted mean age of an individual arrested was 32 years of age with a standard deviation of 8.95 years. This means that about two-thirds of those individuals who were involved in an incident where an arrest occurred were between the ages of 23 and 41. About ninety-five percent were between the ages of 14 and 50.

Using this data, DHS estimated the percentage of individuals who would be prevented from using a fraudulent identification (as a result of the REAL ID rule) for the age cutoffs 41, 45.5, and 50. Based upon a normal distribution, 66.7% of all individuals using a fraudulent identification would be between the ages of 23 and 41 (1 standard deviation) and 95% of all individuals would be between the ages of 41 and 50. These statistics were then used to estimate the risks associated with the age cutoffs of 41, 45.5, and 50. An age cutoff of 41 would allow DHS to potentially prevent the likelihood of 83% of all individuals from using a fraudulent identification. But as a means of providing additional national security, the final REAL ID rule would not have prevented 17% of the individuals from using a fraudulent identification.

With a cutoff of age 50, DHS would potentially prevent the likelihood of 97% of all individuals from using fraudulent identification. But as a means of providing additional national security, the final REAL ID rule would not have prevented 3% of the individuals from using a fraudulent identification. Since the age cutoff 45.5 is the midpoint of the ages 50 and 41, DHS estimated the likelihood that REAL ID would prevent the use of a fraudulent identification, by using the averages for

the age cutoffs 50 and 41 and found that an age cutoff of 45.5 would prevent the likelihood of 90% of all individuals from using a fraudulent identification. But as a means of providing additional national security, the final REAL ID rule would not have potentially prevented 10% of the individuals from using a fraudulent identification (See Table Below).

TABLE 1.—RISKS ASSOCIATED WITH DIFFERENT AGE CUTOFFS

Risks associated with different age cutoffs		
Age cutoff	Potential percentage number of incidents prevented (%)	Potential percentage number of incidents not prevented (%)
41	83	17
45.5	90	10
50	97	3

The TSA data was analyzed even further by stratifying the universe of these 86 arrests into three categories. The categories are (1) Arrests where a fraudulent identification was discovered, but the fraudulent identification was not the reason that the individual became a suspect; (2) arrests where the individual was a TSA Selectee and during the process, a fraudulent identification was discovered; and (3) arrests where the individual became a suspect because of his/her use of that identification and the use of a fraudulent identification was the cause for the arrest. Because DHS was not able to determine *a priori* the characteristics of the population as a whole as to who uses a fake identification and who does not (in order to determine an appropriate age cutoff), the best that can be done is to examine the ages of those who were arrested when the use of a fraudulent identification was the cause of the arrest and compare that population to those who were arrested where a fraudulent identification was discovered at the time of the arrest but the fraudulent identification was not the reason to suspect the individual. The results show that the means of each population are not statistically different from each other. In other words, we cannot say that the samples are from different populations and we accept the null hypothesis.

Comment: One commenter wrote that the waiver process by which a State may request an extension of the compliance deadline to December 31, 2009 is acceptable, as it gives States the time they need to plan, budget, and implement the regulations. Another commenter wrote that compliance related to the verification of lawful status of aliens could be implemented by all 56 states and territories by the May 11, 2008 deadline, and that there is no rational basis to extend the specific deadline for SAVE compliance. One commenter wrote that DHS should institute a formal safe harbor so that a State may be deemed compliant if it is making reasonable progress toward implementing REAL ID. One commenter wrote that when there is a legitimate reason to grant an extension for one State, it should apply to all states. Another commenter wrote that a State's request for an extension should be deemed justified in the absence of extraordinary circumstances. One commenter wrote that DHS has demonstrated flexibility by allowing States to delay implementation and creating a petition process for States needing more time, and the commenter encouraged DHS to continue collaborating so that States have the necessary flexibility to comply with the law.

Response: Although the above comments indicated that certain aspects of the proposed rule do not require an extended compliance period, all the commenters observed that States would be unable to meet the overall compliance deadline proposed in the NPRM. As noted earlier in this preamble, in addition to the extension proposed in the NPRM through December 31, 2009, DHS is allowing a second extension request valid until no later than May 10, 2011.

Also as noted earlier in this preamble, DHS has chosen this approach as the most effective and expeditious way to achieve the purposes of the Act. DHS believes that this approach balances the strong national security objective of improving the reliability of identification documents presented for official purposes, including the boarding of commercial aircraft, with the needs of the States to spread out their compliance costs over a greater period of time and to obtain the necessary legal and budgetary approval from within their State to comply with the regulations. Furthermore, because some States are uniquely situated and have taken different steps to come potentially closer to compliance with the REAL ID Act than other States, DHS does not believe that ''one size fits all'' when it comes to the use of the Secretary's extension authority.

D. Privacy Considerations

Comment: DHS received numerous comments regarding the need to protect the privacy of REAL ID cardholders. The comments raised a wide range of concerns including the creation of a national ID; establishment of a Federal database on all ID holders; the uses of the ID; the need to set specific standards to protect privacy, including addressing data storage, access rules, safeguarding the data, and retention period for the data; the need to provide a redress process; limiting Federal access to the data; who should operate or govern the query system; and best practices for privacy protection of the data. AAMVA also commented that the States are committed to protecting privacy and that they are prepared to address privacy in their security plans and many already have such plans in place.

At least one State and several other commenters, including NASCIO, expressed concerns about the development, governance, and protection of privacy in Federal reference databases. NASCIO recommended collective State governance. Many commenters wrote that State information security requires extreme caution, given that exposing personal information in untested databases would result in great harm if a security breach occurred.

Response: DHS recognizes that protecting the privacy of REAL ID cardholders is a prerequisite to obtaining the public's trust in the REAL ID card. DHS has addressed those concerns in the final rule to the full extent of its authority by mandating protections for the personally identifiable information DMVs collect, store, and use pursuant to the REAL ID Act and its implementing regulations.

1. Privacy Concerns Regarding a National ID and a Federal Database

With regard to concerns that REAL ID will create a national ID, DHS does not intend that REAL ID documents become a de facto national ID and does not support creation of a national ID. The REAL ID Act, however, does not provide authority for DHS to issue restrictions on who may or may not use REAL ID cards. DHS can only define those ''official purposes'' for which a REAL ID credential must be used in lieu of other State-issued driver's licenses. The final rule has limited ''official purposes'' to those set forth in the Act—accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants. In addition, the final rule does not require that the REAL ID driver's license or identification card number or design be unique nationally, thus possibly limiting the functionality of the REAL ID card or identification number as a

national ID card. It is unclear at this early stage whether REAL ID cards in fact will be used differently from current State driver's licenses and identification cards; but if cardholders experience specific abuses regarding third-party misuse of these cards, Congress and the States can determine whether and how to address such abuses.

With regard to concerns that REAL ID will create a Federal database on all REAL ID card holders, DHS does not intend to own or operate a database on all driver's license and identification card holders. REAL ID implementation, however, will require a messaging system (generally known as a ''hub'') to serve as the backbone to support the verification checks REAL ID requires. In addition, the State-to-State data exchange will likely require a software application (likely an index or pointer system) to enable the States to exchange limited information to identify whether an applicant for a card holds a card in another jurisdiction.

DHS is mindful that the States expect to continue to have control over their systems, their information, and the processes that govern any use or access. DHS agrees that issues relating to the governance of any State-to-State exchange of information are critically important, and that the States will need to play an important role in determining the governance structure of any system(s) that may interface with State licensing systems and the Federal verification systems required to implement REAL ID. Many of the individual State comments emphasized that they are committed to protecting privacy and that they are prepared to address privacy in their security plans and already have such plans in place. The governance of the system(s) necessary to conduct the data checks will be established in consultation with DOT and the States during the first phase of the REAL ID implementation. The Privacy Impact Assessment issued in conjunction with the final rule discusses the governance issue in more detail.

As described above, DHS is currently working with AAMVA, DOT, the Social Security Administration, the Department of State, National Association of Public Health Statistics and Information Systems (NAPHSIS), and State representatives to define requirements for a messaging system to support the multiple data verification checks REAL ID requires. The backbone of the messaging system could be AAMVAnet, the network system AAMVA already operates to facilitate data verification for the State DMVs. It is important to note for purposes of privacy and security that the AAMVAnet backbone resides on a private network with no connectivity to the Internet, making it much less vulnerable to attacks. It has been, and will continue to be, a highly secure transportation layer for all communications between the States and agency databases. DHS will work with DOT and AAMVA to build upon the security, privacy, and governance principles that have guided AAMVA and the States for decades in conducting licensing checks by reinforcing the security and privacy features of the AAMVA communications and systems architecture.

In addition to potentially using AAMVAnet as the backbone, DHS, DOT, and the States are exploring the alternative of using the Commercial Drivers Licensing Information System (CDLIS) as the platform for supporting the State-to-State data exchange requirements of the REAL ID Act and regulation. CDLIS already supports queries to every State DMV every time an individual applies for a driver's license in any State or the District of Columbia. Although privacy groups urged DHS not to build upon CDLIS since it is a centralized database, it is more technically and economically difficult to design a State-to-State data exchange system that avoids using a central repository (an index or pointer system) to direct the checks to the appropriate State. DHS understands that State systems would not be able to handle the volume of messages received if all jurisdictions were sending and receiving messages from all jurisdictions at the same time. The central repository would facilitate the check by identifying which jurisdiction(s) has a match and obtaining the relevant record information. The repository would only be used to facilitate the State-to-State data exchange or for authorized law enforcement personnel who are checking a specific license or identification card against the system. Moreover, CDLIS is a secure, State-governed system that stores only the minimum amount of personal information necessary to minimize false positives and to facilitate the routing of queries and responses between States.

With regard to limiting access, (Federal, State, and private-sector) to the State DMV data stored in the data verification system, DHS, DOT, and the States will define the access rules. The REAL ID Act does not create Federal access rights to State DMV databases. Moreover, DHS supports limiting access to the data verification system to authorized State DMV personnel and to Federal government agencies engaged in official responsibilities pertaining to law enforcement, the verification of personal identity, or highway and motor vehicle safety. For example, DHS personnel do not currently access CDLIS or AAMVAnet. Its law enforcement agents obtain access to State driver's license information using National Law Enforcement Telecommunications System (NLETs) and commercial data sources.

2. Protection of State DMV Databases

To help protect the privacy and security of the personally identifiable information (PII) held in State DMV databases, § 37.41 of the final rule requires States to prepare a security plan for all State DMV facilities and systems involved in the issuance, enrollment, production, or manufacture of driver's licenses and identification cards, and to submit the plan to DHS as part of the State's application for certification. The final rule requirement for the security plan to include reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information collected, stored, and maintained in DMV records and information systems is consistent with key information safeguards outlined in the Privacy Act of 1974 (5 U.S.C. 552a) and the Federal Information Security Management Act of 2002 (44 U.S.C. 36).

The security plan requires a number of important privacy and security safeguards including, but not limited to: (1) Procedures to prevent unauthorized access, use, or dissemination of applicant information and images of source documents retained pursuant to the Act; (2) standards and procedures for document retention and destruction; (3) a privacy policy; (4) a prohibition on release and use of personal information that, at a minimum, is consistent with the Driver's Privacy Protection Act, 18 U.S.C. 2721 et seq.; (5) access controls, including employee access badges, background checks and systems controls; (6) emergency incident response plans; (7) internal audit controls; (8) physical security of facilities where driver's licenses and identification cards are produced; (9) security of the document materials and papers from which driver's licenses and identification cards are produced (§§ 37.41 and 37.43).

The requirement that the security plan include a privacy policy regarding the personally identifiable information collected and maintained by the DMV provides a key privacy protection. Although the final rule does not define

the specific content of the privacy policy, DHS expects that the policy will reflect the fair information principles noted in the NPRM, which call for openness, individual participation (access, correction, and redress), purpose specification, data minimization, use and disclosure limitation, data quality and integrity, security safeguards, and accountability and auditing. These principles are widely recognized and embodied in numerous Federal, State, and international law and codes of practice. In addition to reflecting these principles, DHS recognizes that the privacy policies will need to be consistent with State privacy laws governing DMVs information practices, and the final rule in no way reduces the protections States already afford PII held by DMVs.

With regard to concerns regarding disclosure of PII from DMV databases, the final rule requires that the security plan include a prohibition on release and use of personal information that, at a minimum, is consistent with the DPPA. Although the DPPA provides for a large number of permissible uses, it is the only Federal law that currently applies to State DMV records and will provide a floor that States can build upon to further limit the disclosure of DMV record information.

3. Privacy Concerns Regarding the Machine Readable Technology Employed by REAL ID

Section.IV.I.8 of the comments discussion discusses the comments and responses regarding the machine readable zone (MRZ) on REAL ID cards. In brief, commenters were split between the privacy groups that were concerned about third party ''skimming'' of information from the MRZ if it is not encrypted, and the State and law enforcement groups that opposed encryption because it could interfere with speedy law enforcement access to the information and it would be difficult and costly to manage encryption keys across so many jurisdictions.

Given law enforcement's need for easy access to the information, and the complexities and costs of implementing an encryption infrastructure, DHS is not requiring encryption of the MRZ at this time. If, in the future, the States collectively determine that it is feasible to introduce encryption, DHS may consider such an effort so long as the encryption program enables law enforcement easy access to the information in the MRZ. Moreover, in the future, DHS, in consultation with the States and DOT, and may consider technology alternatives to the PDF417 2D bar code that provide greater privacy protections after providing for public comment.

As discussed in the Privacy Considerations section of the NPRM (72 FR at 10824–25), DHS strongly encourages the States to address concerns about the ability of non-law enforcement third parties to collect or skim personal information stored on the REAL ID driver's licenses or identification cards. Some States, such as California, Nebraska, New Hampshire, and Texas have passed laws that prohibit the collection of information on a driver's license or identification card. In addition, AAMVA has drafted a Model Act [2] that, if enacted by a State, would prohibit commercial users, except as provided by the State's legislation, from using a scanning device to: (1) obtain personal information printed or encoded on the card and; (2) buy, sell or otherwise obtain and transfer or disclose to any third party or download, use or maintain any data or database, knowing it to contain personal information obtained from a driver's license or identification card. The Model Act authorizes verification of age for purchasing alcoholic beverages or tobacco products, but with strict limitations on the storage and use of such information.

In addition to concerns about third-party skimming, privacy groups commented that access to the MRZ should be restricted to law enforcement, while other commenters also supported access without information collection for bars and liquor stores to help prevent underage drinking. In response to commenters urging that the rule limit Federal agency access to the MRZ, DHS is not aware of any current plans by Federal agencies to collect and maintain any of the information stored in the MRZ. If a Federal agency should want to use the MRZ to collect and maintain personally identifiable information in the future, any such information collected from the MRZ would be subject to the protections of the Privacy Act of 1974 (5 U.S.C. 552a), and other Federal laws and policies regulating the use and handling of personally identifiable information, including requiring appropriate time for public notice.

A number of commenters also urged DHS to limit the data elements in the MRZ to the minimum necessary, particularly if the MRZ is not encrypted. DHS has reviewed the elements identified in the NPRM and eliminated the requirement to include the name history in the MRZ. All other data elements are necessary for DMV and law enforcement purposes.

4. Additional Privacy Concerns

The privacy groups and individuals also filed comments on a number of other privacy issues such as redress, the confidentiality of the address for certain at-risk individuals, and the Western Hemisphere Travel Initiative (WHTI)-compliant card and its use of Radio Frequency Identification (RFID) technology. The comments and responses to these additional privacy concerns are discussed in other sections of this final rule.

Comment: Two States wrote that the proposed rule did not provide adequate safeguards for data storage, thereby significantly increasing the risk of identity theft. One commenter wrote that even the most rigorous security measures could be foiled by personnel with legitimate access intentionally or inadvertently exposing information. Several commenters wrote that the rule's broad expansion of data collection and storage creates a significant threat to privacy and that guidance on access to data and accountability should be issued. Commenters also wrote that stored data should be secured to protect the identities of victims from abusers in State government who have database access.

Response: Section 37.41 of the final rule helps address concerns about adequate protections for the DMV databases and information systems. It calls for States to prepare a security plan, including providing reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information stored and maintained in DMV records and information systems. The rule specifically points out the need to include access control measures to prevent unauthorized access to the information. States are already sensitive to the importance of protecting their data and systems. Section 37.33(b) will help ensure that DMVs provide comprehensive, layered security protection to reduce the incidence of unauthorized access and use. In addition, this final rule does not preempt States from implementing privacy protections that are even more protective.

Comment: One State wrote that DHS should set standards for accessing the required information from the Federal government and other States so that the verification process is performed

[2] ''Model Act to Prohibit the Capture and Storage of Personal Information Obtained from a Driver's License or ID Card,'' AAMVA 26–8.2–03, 2003.

similarly by all States. Multiple commenters stated that they want data systems to be one-way and used solely for the purpose of verification; Federal system owners would not be able to query State databases. Similarly, other commenters wrote that the rule should limit how States can access Federal databases for purposes of verifying source documents and should only allow authorized DMV employees access to Federal databases. One commenter requested that the final rule make clear that no State may electronically access source documents contained in DMV databases in other States. Several States opposed Federal government access to the extensive data collected by States and suggested a network interface that only allowed State queries of the databases. One commenter wrote that it is unclear from the proposed rule how the federated query service will operate and manage the data between databases and DMVs, and while strict access controls to REAL ID data and documents will help minimize security and privacy risks, such controls will not be possible without DHS answering these questions prior to implementing REAL ID.

Response: DHS is working with DOT, AAMVA, and the States to enhance existing querying systems to meet the requirements of the REAL ID Act and rule. This ''federated querying system'' builds upon existing systems that include verification of DMV applicant birth certificates and social security numbers. These existing systems enable States to query the SSOLV database managed by SSA and the EVVE database managed by NAPHSIS. In both cases, only State DMVs can initiate queries. Moreover, SAVE, the USCIS system for verifying the lawful status of individuals in the United States, is designed on a similar basis, with only States able to initiate queries. Enhancements to existing systems to verify information held by the Department of State will be designed and built on the same principles.

In addition, State-to-State data exchanges required by REAL ID may consider leveraging the Commercial Drivers Licensing Information System (CDLIS) as the baseline platform for systems design, development and deployment. CDLIS is a secure, State-governed system that stores the minimum amount of personal information possible to facilitate the routing of queries and responses between States. Enhancements to CDLIS to support the requirements of REAL ID will not change the fundamental architectural, security, and privacy principles upon which CDLIS has been built and operated by the States for nearly two decades.

As noted above, § 37.41 of the final rule addresses these concerns. It calls for States to prepare a security plan, including providing reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information stored and maintained in DMV records and information systems. The rule specifically points out the need to include access control measures to prevent unauthorized access to the information.

Comment: One State recommended that paper document retention should not be required once electronic formats were secured. Another commenter wrote that REAL ID should collect only the data that is absolutely necessary and keep it for only as long as necessary, and requirements should be in place to periodically review and purge information.

Response: Section 202(d)(2) of the Act mandates that States ''retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.'' DHS does not have discretion to change that requirement. Accordingly, under this final rule, States may choose to keep paper copies, microfiche, or digital images of source documents. Depending on the method of document retention adopted by the State, the State must maintain paper copies for a minimum of seven years, or microfiche or digital images of source documents for a minimum of 10 years pursuant to the Act. We note that the NPRM proposed to allow retention of microfiche for 7 years; however, as discussed above the statute mandates retention of ''images'' of source documents for 10 years. A microfiche is a film image, rather than a paper copy, of a document; therefore, we have corrected the error in the proposed rule to more accurately reflect the statutory mandate.

Comment: Many commenters wrote that obtaining a REAL ID could become a requirement for participation in American life, and that a REAL ID could be used for purposes beyond what is contemplated today, such as controlling gun ownership or smoking. Another commenter wrote that implementing REAL ID would undoubtedly result in a system that political and agency heads would not restrain themselves from using and expanding in the future, and that REAL ID would become a practical necessity for anyone wishing to travel on an airplane, open a bank account, collect Social Security benefits, or take advantage of other government benefit programs. Other commenters wrote that the result would be a dividing of the citizenry into those who have REAL identification cards and those who do not, with the later group subject to suspicion. One commenter urged DHS to make clear in the final regulations that driver's license numbers and ID card numbers must be unique within a State and that the REAL ID cards should not have a nationally standard format.

Response: DHS agrees with the comment that a driver's license or identification card number needs to be unique only within a State and need not be a unique nationally identifying number. DHS also understands the concerns raised in the comments about how a REAL ID might be used outside of the defined ''official purposes'' identified in the Act and this final rule. DHS does not intend that a REAL ID document become a de facto national identification card. Whether States choose to require presentation of a REAL ID for State purposes is not within the purview of DHS's authority under the Act—which applies to documents that Federal agencies can accept for official purposes—and thus is outside of the scope of this rulemaking.

E. State to State Database Queries

Comment: Several commenters suggested the following requirements for State databases: using a single agreed-upon naming record keeping, clarifying ''transferable'' functionalities, implementation of point-to-point interfaces for data verification, a decentralized query system, and a system to check for duplicate registrations in multiple States. One commenter suggested that every State have a data governance committee. Several States offered best practice suggestions to support State database security, including encryption, annual employee confidentiality agreements, secured data centers, testing programs to determine tampering, security audits, and multi-factor authentication.

Response: DHS agrees that issues relating to the governance of any State-to-State exchange of information is critically important, and that the States will need to play an important role in determining the governance structure of any system(s) that may interface with State licensing systems and the Federal verification systems. DHS is mindful that the States expect to continue to have control over their systems, their information, and the processes that govern any use or access.

During the initial period of REAL ID implementation, States will conduct data verification using their current

methods of connection to SSOLV, SAVE, and the other State DMVs. States will continue to use AAMVAnet to connect to these data sources. AAMVAnet is governed by the Board of AAMVA and is subject to the security and privacy requirements established by the association of DMVs. As DHS, DOT, AAMVA, and the States complete the upgrade of existing systems to meet the requirements of REAL ID, these systems will be deployed and operated on the same basis as the current network of AAMVAnet-based systems for DMV verification of applicant data and State-to-State exchanges of driver information. The architecture of these systems will determine the scope and extent of the privacy concerns they pose.

F. Document Standards for Issuing REAL ID Driver's Licenses and Identification Cards

1. Identity

Comment: One State agency asked whether the term ''source document'' in the proposed rule is synonymous with ''identity document'' used in the Act. One State wrote that it was concerned about individuals having to surrender their REAL ID card from one State when moving to a new State and applying for a new card. Many commenters wrote that certain applicants would have difficulties obtaining proper source documents, including refugees, lower-income individuals, persons who live in rural areas, the elderly, minorities, and abuse victims. Another State suggested that the rule should only specify criteria and procedures rather than a list of specific documents.

Response: DHS disagrees with the comment that the rule should specify criteria rather than a list of specific documents acceptable to establish a person's identity. Limiting the number of documents means that only the documents which DHS has found to be the most secure may be used to demonstrate identity. Second, identifying specific documents improves the chances that DMV employees will be able to distinguish valid from fraudulent documents because there will be fewer categories of documents with which they will need to be familiar. Third, a smaller list of documents increases the ease of verifying the documents independently, a related statutory requirement and one that will be very effective in reducing document and identity fraud.

DHS does not agree that certain categories of individuals cannot reasonably obtain the identity documents specified in the rule, but the rule provides a reasonable level of discretionary flexibility to address these types of cases.

Comment: Commenters wrote that the list should be expanded to include a variety of documents, including adoption papers, refugee status paperwork, expired foreign passports if USCIS documentation is current, passports with expired visas, derivative visas, Immigration Court documents, foreign birth records, foreign national identification cards, the I–94 (Arrival-Departure Record), and the I–797 (Notice of Action). Refugees and asylees are more likely to have these documents before they receive an Employment Authorization Document (EAD). Two States suggested that documents that can be electronically verified through SAVE should be acceptable. Commenters wrote also that foreign applicants may have documents that are not on the list but may have been issued by DHS or the courts to prove immigration status.

Response: The document list provided in the proposed regulation and adopted under this final rule is only for demonstrating identity, not lawful status in the United States. DHS agrees with the commenters who suggest that any document verifiable by SAVE is acceptable for proving lawful status, and that is what this final regulation provides. These can include Forms I–797 and I–94 as they provide sufficient information for a State DMV to check SAVE, which will be the method by which aliens lawfully present in the United States establish lawful status. But because many of these documents (including the ones listed above) cannot, and are not intended to, prove a person's identity, an additional document must be provided for that purpose. In the case of refugees and asylees, they will be able to obtain a Form I–766, Employment Authorization Document.

DHS cannot accept the comment that foreign documents be included on the list of acceptable documents to prove identity. First, section 202(c)(3)(B) of the Act specifically prohibits any States from accepting any foreign document other than a passport. Second, the Act requires that documents presented for proof of identity be verified by the issuing agency. State DMVs cannot be expected to verify with foreign governments the validity of documents. DHS has, instead, decided to use the U.S. visa within the foreign passport as the identity document that a nonimmigrant alien can present.

Comment: One commenter wrote that a delayed birth certificate should be considered an acceptable document. One State wrote that many births in rural areas are not recorded, and States should be able to use other documents. One commenter wrote that a requirement for a certified copy of a birth certification would place a hardship on poor persons. One commenter supported the concept of re-verification of birth certificates for renewals of REAL identification cards, except that the rule should allow the option for the applicant to use documents with the current legal name instead of the name at birth.

Response: While confirming identities with delayed birth certificates can be problematic, this final rule does not preclude a State from accepting a validly-issued delayed birth certificate. DHS agrees that some, mostly elderly, individuals may not have a birth certificate at all. As a result, the final rule permits a State to use its exceptions process to determine what alternative documents an individual may present in this limited circumstance to establish his or her date of birth. DHS does not agree that lower-income individuals will have a hardship obtaining certified copies of their birth certificates and believes that States may be able to assist those individuals for whom the cost of obtaining a birth certificate is prohibitive. Further, DHS believes that there is value in re-verifying applicant information upon renewal of driver's licenses and identification cards and has amended the renewal sections to require re-verification of SSN prior to issuance.

Comment: Commenters requested a variety of additional documents be considered as acceptable source documents, including Federally-issued identification documents such as military identification cards, the Common Access Card, retired military ID cards, dependent military ID cards, Veteran Affairs Universal Access Photo ID cards, and Transportation Workers Identification Credentials (TWIC). Some commenters also requested that Native American Tribal Documents be deemed acceptable source documents. One State asked whether a tribal photo identification card accompanied with a Canadian birth certificate (which is currently acceptable to the commenting State) will be acceptable to DHS. If not, these populations may encounter particular difficulty obtaining a REAL ID.

Response: DHS does not agree with comments suggesting addition of Native American Tribal Documents, TWIC cards, or Common Access Cards (CAC) or military identification issued by the U.S. Department of Defense as identity documents for REAL ID purposes at this

time. DHS continues to understand from the Department of the Interior and Bureau of Indian Affairs that Tribal members are similarly situated to the general population, and have access to the identification documents set forth in the rule. Where a Tribal member does not have the necessary document to establish identity, date of birth, or lawful status, a State's exception process can take this into account based on the State's knowledge and experience with Tribal documents in its area of jurisdiction.

In regard to the use of a TWIC as proof of identity, at this time, DHS does not believe that it would be feasible for States to accept TWIC cards as initial proof of identity by persons applying for a REAL ID card. First, section 202(c)(3) of the REAL ID Act requires States to verify all documents presented by applicants as proof of identity. The capability for States to verify a TWIC card currently does not exist at this time.

Second, although a TWIC holder must have been determined to be lawfully present in the United States to obtain the TWIC, the TWIC does not necessarily expire when the holder's lawful status expires. Therefore, a DMV could not use the TWIC card alone as evidence of lawful status and the applicant would have to present both a TWIC (for identity) and a separate document (for status).

Accordingly, there is little benefit to the individual or the DMV at this time to include a TWIC as an acceptable identity document. As such, the final rule does not include TWIC as an acceptable form of identification. However, DHS will revisit this issue in the future should such a capability become available and will consider the ability for States to verify TWICs with the federal government as the standards for the ''hub'' are developed.

2. Social Security Documentation

Comment: Several commenters, including States, wrote that obtaining a Social Security card can be a lengthy process. They argued that some individuals may have lost their original card, a Social Security number (SSN) does not enhance the identification process, and ineligibility for a SSN is difficult to determine and verify. One commenter wrote that individuals might not have a SSN because of religious beliefs. One State wrote that States should have the option of requiring a Social Security card.

Response: The REAL ID Act requires that individuals provide proof of their Social Security account number or verification that they are not eligible for a Social Security account number. While the typical proof submitted to DMVs is a Social Security card, the rule allows for the submission of alternate documents, such as a W–2 form, SSA–1099 form, or pay stub to establish the SSN. Use and verification of the SSN is widely seen by almost every State as an effective tool in enhancing the identification process. DHS has further amended the rule to clarify for the DMVs when an individual will have not have a SSN, which is largely tied to immigration status and identity documents used to apply for a driver's license. Other instances may be addressed in exceptions processing.

3. Principal Residence Documentation

Comment: Many commenters suggested that the definition of ''principal residence'' be amended. One State recommended that DHS define ''principal residence'' as the jurisdiction in which an individual spends the most time. Another commenter requested ''principal residence'' be defined as the primary or most important place of abode of an individual and at which he or she presently has an intention of living for an indeterminate period. Another State suggested that the definition be changed to require that a person's principal residence be within the jurisdiction issuing the card and to allow the States to issue exemptions. One State suggested that DHS clarify the definition so that students, military, visitors, and others who are temporarily residing in another jurisdiction are not required to change their principal residences.

Response: DHS agrees that the definition of ''principal residence'' needs to be clarified in the rule. The term is defined in the final rule as the location where a person is currently domiciled (i.e., presently resides even if at a temporary address) in conformance with the residency requirements of the State of domicile, if such requirements exist.

Comment: Commenters wrote that requiring two documents proving residence is burdensome on certain individuals (i.e., recent movers, minors, homeless, and those not listed as primary payer on accounts) and suggested use of the United States Postal Service (USPS) National Change of Address system as a verification tool. One State recommended that the rule allow use of an on-line address verification system to replace the two forms of address documents, at least for remote renewals.

Response: DHS does not agree that it is too burdensome to require an individual to produce two documents to establish his or her address of principal residence. Since the State has maximum flexibility in determining what documents are acceptable for this purpose, DHS believes that the States will be able to find a combination of documents for each person eligible to apply for a REAL ID driver's license or identification card. DHS believes States may use the procedures established in their exceptions processes when seeking to document the address of principal residence of the homeless or other individuals who may not have a fixed street address.

Comment: Commenters wrote that there are certain groups of people including students, long-haul truck drivers, the homeless, migrant workers, and others who do not have a single fixed address and who will not be able to meet this requirement. One commenter requested that the rule be strengthened by clarifying in the exceptions process that the requirement of a fixed address will be waived as long as a REAL ID applicant can make a showing that they have none and that they can comply with other documentation requirements.

Response: As noted above, DHS believes that States will be able to resolve these issues through the use of their exceptions process.

Comment: Several commenters noted the difficulty in providing a street address because many rural addresses use rural route numbers only, and recommended new regulatory text: ''An acceptable street address includes rural delivery route and/or box number or other address convention used by the USPS in all areas of the U.S. where a number and street name has not been assigned for U.S. mail delivery.'' One commenter wrote that in its jurisdiction, it is common to find streets with same names throughout different communities and that rural addresses are identified by kilometers and hectometers within a street address or neighborhood. Another commenter (a State) has islands that do not have home addresses; mail is delivered to post offices where the residents must go to retrieve their mail. One State noted that many Native American populations do not have physical addresses.

Response: DHS agrees with these comments and has amended the rule to define ''address'' as an address convention used by the USPS in areas of the United States and Territories where a number and street name has not been assigned for U.S. mail delivery.

Comment: One commenter wrote that address changes make up the largest number of driver record changes and many States do not require issuance of

a replacement card until the next renewal cycle. Several commenters, including States, wrote that when an address change occurs, no REAL ID card need be required and that it is cost prohibitive for States to issue new documents for address changes.

Response: DHS agrees with these comments and is no longer requiring an in-person transaction for an individual to change his or her address. DHS also leaves it to State law and procedure when and under what circumstances a State requires issuance of a replacement driver's license or identification card.

4. Lawful Status Documentation

Comment: Several commenters wrote that there are many examples of lawfully present immigrants who may not have the listed documents and that the list should be expanded. One commenter wrote that these omissions violate the Constitution by denying to individuals in these classes the rights and privileges accorded to others, and stated immigration documents do not always reflect actual status. A State wrote that Temporary Protected Status aliens should be required to provide documentation from DHS of an established identity. Some commenters objected to the need for an unexpired U.S. visa on a foreign passport. They pointed out that renewing a visa would involve foreign travel, and in any case a visa does not authorize a stay in the U.S. for any particular period of time. An alien with nonimmigrant status may lawfully extend or change his or her nonimmigrant status without maintaining a valid visa stamp. One State noted that in some cases a passport might expire before the visa.

Response: DHS has included the list of documents as verifying identity of the person presenting them, not lawful status. Lawful status may be determined through verification against DHS's SAVE system. Aliens who are granted Temporary Protected Status are already eligible for EADs, Form I–766, and thus have a document proving identity. DHS does not believe that this rule treats citizens and aliens differently—each is required to prove identity and lawful status to obtain a REAL ID driver's license. Further, DHS does not believe that treating citizens and aliens differently is in violation of the Constitution, but an inherent right of a sovereign nation and one that reflects American constitutional law. Regarding the visa in a foreign passport, DHS is not treating the visa itself as a document establishing lawful status. Again, the check of DHS's SAVE system will accomplish that purpose. The visa is used to verify identity and can be verified with the issuing agency—the U.S. State Department. DHS cannot verify, with the issuing agency as required by statute, foreign passports because there is no guarantee that issuing a foreign government would respond to a DMV request for a specific passport. Finally, like all documents that verify identity, the document itself must be unexpired to assure that a significant amount of time has not passed such that the person's appearance has changed. This is a fundamental rule with issuance of all types of documents that are designed to prove a person's identity.

5. Verification of Documentation Presented

Comment: One commenter wrote that DHS should partner with AAMVA in implementing document verification requirements. Several commenters wrote that States need ongoing training and guidance for verification and to be advised what to do if documents cannot be verified. A few commenters noted that the verification of documents is only a verification that paper contains legitimate data and not that the applicant is the owner of the paper or that the document is authentic. A State asked who makes the determination of whether a State's verification procedure is ''effective.'' Several commenters wrote that Federal electronic verification systems do not exist yet or need significant enhancements; therefore, compliance requirements should be delayed. One commenter wrote that States must find their own ways to verify documents but that States lack the legal authority to force compliance. Commenters suggested States use third party databases or automated document authentication systems and share images to deter identity fraud. One State asked whether it would have to re-verify source documents if the applicant already had a REAL ID from another State.

Response: DHS is working with AAMVA and State representatives to design and implement verification systems to support the requirements of the REAL ID Act and this rule. Representatives of numerous States and the Federal agencies responsible for verification of identity information for REAL ID and related Federal government programs are continuing to meet to develop recommendations on prioritization of data and document verification systems based on risk and value. Two verification systems are currently available for use by all States—the SSOLV system for verification of social security numbers with the SSA and the SAVE system managed by USCIS for verifying that an applicant is lawfully present in the United States and for how long. These systems have been in widespread use for many years and are highly effective. DHS is working to improve further the usability and accuracy of these systems and to meet REAL ID-specific requirements. DHS is also working with the appropriate Federal and nongovernmental agencies to verify other documents and applicant data mandated by this rule. As these systems are deployed and become widely available for use by States, DHS plans to publish notices of availability and timetables for required use in the **Federal Register**.

DHS recognizes that verification consists of two separate elements: (1) Determining that the source document is genuine and has not been altered; and (2) determining that the identity data contained on the document is valid. Electronic verification systems can support these elements. However, DHS recognizes that other methods can be employed by States to confirm one or more elements of identity assurance. Electronic verification systems are only one component of a suite of measures to assure States that the applicants are who they say they are and that they are lawfully present in the United States.

DHS recognizes that there are many different techniques for verifying the identity and qualification of applicants and will evaluate the effectiveness of such techniques.

Comment: AAMVA and several States wrote that a system of passport verifications through the Department of State is not available and it will be difficult for States to determine name matches. One commenter wrote that States must find their own ways to verify documents but that States lack the legal authority to force compliance. Commenters suggested that States use third party databases or automated document authentication systems and share images to deter identity fraud. One State asked whether it would have to re-verify source documents if the applicant already had a REAL ID from another State.

Response: DHS is working with the Department of State and AAMVA to provide a capability to verify passports, U.S. visas, and other information held by the Department of State. When this capability is widely available for State use, DHS will publish a Notice of Availability in the **Federal Register** and establish timelines for State use of this capability. DHS is also working with Federal, State, and nongovernmental organizations to identify and improve

name formats and matching algorithms used by identity verification systems.

Comment: Commenters wrote that they supported the use of a SAVE system to verify lawful status because State DMV staff should not have to be immigration officials, but that many improvements needed to be made to the system. Commenters wrote that SAVE needs to indicate the type of pending nonimmigrant status the applicant has, as well as work authorization information. Another commenter wrote that for students and exchange visitors, information is provided in the Student and Exchange Visitor Information System (SEVIS) system, but SAVE and SEVIS are not yet linked. Several States wrote that they should not have to pay transactional costs for Federally-mandated verification through a Federal system.

Response: The SAVE system has proven to be a highly effective means of verifying immigration status information for many DMVs and other Federal and State agency users for twenty years. DHS is working with AAMVA and USCIS to improve the usability, accuracy, and reliability of the SAVE system even further, to include access to SEVIS and other data through SAVE.

DHS is committed to expediting and subsidizing the improvement, design, development, deployment, and operation of verifications systems to support the requirements of the REAL ID Act and this rule; however, the States have typically borne the costs of verifying the identity and qualifications of applicants for driver's licenses and identification cards.

Comment: Several commenters supported the use of the EVVE system, but pointed out that it is not ready for implementation, and that an exception process would be needed. States opposed having to bear the costs for verification.

Response: DHS recognizes that the EVVE system is not ready for full implementation. The final rule provides for additional time for States to implement EVVE or another system that provides for the verification of birth records. Verification of identity information is a valuable tool that many DMVs utilize. Birth data is currently collected and maintained by the States, and DHS is not seeking to Federalize these records.

Comment: A few commenters supported the continued use of the SSOLV system, even though manual intervention is sometimes needed and the system is sometimes not available. One State wrote that it opposed having to re-verify SSNs that were previously verified through SSOLV.

Response: DHS agrees that the SSOLV system is the best existing system to verify an individual's SSN. DHS does not believe that the short amount of time it takes a State to enter an SSN and verify it through SSOLV is an unreasonable burden to impose, even for those persons whose SSN was previously verified through SSOLV. Forty-eight States and the District of Columbia currently have the capability to verify SSNs through SSOLV or other means. This requires electronic verification of SSNs with SSA but allows States to use other means than SSOLV. Verification of SSNs through SSOLV costs pennies and is typically completed in a few seconds. DHS, AAMVA, and the States are working with SSA to improve the accuracy and reliability of the SSOLV system.

Comment: Several States and commenters expressed concern that States are required to verify an individual's address of principal residence, yet DHS concedes in the rule that no such method exists. AAMVA wrote that in order for the States to support the verification process, DHS must clarify what the ''system of document verification acceptable to DHS'' really means. One State wrote that DHS should develop national standards for address requirements and verification; AAMVA wrote that this verification should be left to the States to determine and provide to DHS in their certification plans. Several States wrote that development or implementation of an electronic verification system for proof of principal residence is not feasible.

Response: DHS agrees that States are best situated to verify an individual's address of principal residence. The rule gives States maximum flexibility in determining an individual's address of principal residence.

Comment: Many commenters wrote that DHS should delay implementation of this final rule until all system components needed for verification are in place and tested. AAMVA and several States expressed concern about the cost for verification processes, particularly programming costs for States to adapt State systems for the new requirements and to establish connections with verification systems. States wrote that an all-driver verification system is needed for implementing the REAL ID program. Commenters suggested expanded use of the Commercial Driver License Information System to satisfy the one-driver, one-record goal. Some commenters objected to the concept of a national database. Some commenters wrote that electronic verification systems must be fast and reliable; provide real-time, accurate information; and be integrated into the REAL ID issuance process. One commenter favored a decentralized query system where one DMV uses an applicant's basic identifying information to send requests to other jurisdictions. A few States asked how a compliant State would interface with a noncompliant State in verifying an out-of-State card. Other commenters wrote that the requirement to check with other States to see whether a REAL ID had been issued should apply to all driver's licenses, not just REAL ID identification cards.

Response: Two of the critical systems for verifying Social Security Numbers and lawful status are fully operational and currently used by many or most States. As stated above, DHS is working with other Federal agencies, nongovernmental agencies like AAMVA and NAPHSIS, and the States to design and deploy additional systems as quickly as possible. These systems will be integrated with the licensing issuance process in each State. States cannot and will not be required to use systems that are not fully operational and available for use.

DHS is also working with the Department of Transportation, AAMVA, and the States to enhance the functionality of CDLIS to meet the requirements of the REAL ID Act and this regulation. Neither the Act nor this regulation requires the design or deployment of a new national database or any new system of exchanging of information between States beyond that already implemented through CDLIS and the National Driver Register. All States currently participate in the exchange of driver information mandated under these processes. The REAL ID final regulation simply requires States issuing REAL ID driver's licenses or identification cards to verify that an individual does not possess a valid driver's license or identification card in another State. This requirement is similar to the existing statutory and regulatory requirements for commercial driver's licenses. When this functionality is available, DHS will publish a Notice in the **Federal Register** detailing the procedures and timeline for State-to-State exchange of data required under the Act.

G. Exceptions Processing for Extraordinary Circumstances

Comment: Three States and three other commenters said that DHS should set minimum standards for the

exceptions process so that there is consistency across the States. However, other States noted that the process should not be too rigidly defined, because the very nature of an exception will by necessity deviate from the current process, and that there are too many variables that need to be analyzed on a case-by-case basis to develop a rigid exceptions process.

Response: DHS disagrees with the comments that DHS should establish a uniform exceptions process for each State. DHS recognizes that each jurisdiction may face its own unique and particular set of facts and circumstances to resolve and that DHS is unable to address all such circumstances. DHS believes that States must have the flexibility to craft an exceptions process adequate to the needs of their States and recognizes that no two State exceptions processes may be identical.

Comment: AAMVA and multiple States opposed the requirement that States submit quarterly reports to DHS analyzing their exceptions processes. Four of these commenters suggested that the information could be included in a State's annual certification report instead. Further, AAMVA and many States opposed the provision requiring State exceptions processes to be approved by DHS and said this requirement would reach too far into the day-to-day operations of State agencies.

Response: DHS agrees that the proposed rule's requirement for a quarterly report on the use of the exceptions process is too burdensome a requirement for the States. The final rule strikes the quarterly reporting and requires States to submit a report as part of the recertification package a State will submit to DHS in connection with REAL ID. As necessary and appropriate, a State can designate this report as Sensitive Security Information (SSI).

Comment: One commenter said that DHS should allow States to employ exceptions processing on any list of documents that they deem circumstantially appropriate. Numerous commenters opposed prohibiting use of the exceptions process to demonstrate lawful status. In general, these commenters believed that many legal immigrants and other groups of people would not be able to meet the rule's requirements for proving lawful status. One commenter said that the scope of the exceptions process described in the proposed regulatory text does not correspond to the scope of the exceptions process described in the rule's preamble. The commenter urged DHS to revise the proposed regulation to explicitly include all data elements required under the REAL ID Act within the scope of the exceptions process.

Response: DHS agrees in part with the comments submitted. Under this rule, the exceptions process can now also be used by a U.S. citizen to establish his or her lawful status in the United States. This will accommodate the needs of elderly or rural residents, for example, who have not obtained a birth certificate but were born in the United States. The exceptions process may not be used by non-citizens to establish lawful status in the United States. That status must be verified in all instances with DHS.

Comment: Several commenters requested that State records not include a ''full explanation'' regarding why alternative documentation was accepted. These commenters expressed concern that victims of domestic violence would be forced to disclose their history of abuse and that information about their location and any name changes would be widely accessible in State databases of driver records. They recommended that a generic statement be added to records of victims of domestic abuse that would indicate that alternative documents were accepted ''for reasons of public safety.'' Three commenters said that it would not be feasible for States to mark exceptions in their data files until they complete computer system upgrades.

Response: DHS agrees that States may use statements like ''for reasons of public safety'' or similar generic expressions when using the exceptions process for victims of domestic violence or others, where the State feels it is necessary to preserve the confidentiality of the reason the exceptions process was used.

Comment: Some commenters suggested that the exceptions process be broadened to include specific populations of individuals who may have problems producing the required documents, who may not spend the majority of time at home (out-of-State students, active military personnel), or who may not be able to come to the DMV in person (individuals with disabilities). Other commenters, including AAMVA, suggested that the exceptions be related to risk and could factor in year of birth or duration of continuous relationship with the State of licensure. Similarly, one State suggested that the rule grandfather all current holders of driver's licenses or identification cards that were previously verified as lawfully-present through SSOLV and/or SAVE.

Response: As noted above, DHS does not believe it would be beneficial to establish a uniform exceptions process for all States. DHS recognizes that each jurisdiction may face its own unique and particular set of facts and circumstances to resolve and that DHS is unable to address all such circumstances. DHS believes that States must have the flexibility to craft an exceptions process adequate to the needs of their State and recognizes that no two State exceptions processes may be identical.

DHS does not agree with the comment that individuals can be ''grandfathered'' for REAL ID purposes. The fact that an individual once had lawful status in the United States when checked through SAVE is not indicative of his or her present status. As noted elsewhere above, DHS does not believe it is burdensome to require an SSOLV check for all persons seeking a REAL ID driver's license or identification card.

H. Temporary or Limited-Term Driver's Licenses and Identification Cards [§ 37.21]

Comment: Two commenters said that use of the term could cause confusion with other license types and requested that another label such as ''limited-term'' be substituted to avoid confusion. One commenter suggested that temporary cards indicate on the face whether the holder is a citizen or non-citizen because any immigration status can be lost or revoked or expire at any time during life of the card.

Response: DHS agrees with these commenters. DHS has added the phrase ''limited-term'' to avoid any confusion with existing State licensing schemes involving temporary driver's licenses or identification cards. The section of the rule is now entitled ''Temporary or Limited-Term Driver's Licenses and Identification Cards.''

Comment: Two States said that matching the expiration date of a temporary driver's license or ID card to the end date of an applicant's authorized stay would require major internal system and business process changes and may also require a legislative change in some States.

Response: DHS notes that matching the expiration date of a temporary or limited-term driver's license to the end date of an applicant's authorized stay in the United States is a requirement of the statute that DHS lacks the authority to change.

Comment: Several commenters opposed the provision limiting the duration of temporary licenses or ID cards to the duration of admission or to one year if the applicant's authorized stay does not have a fixed expiration date. Numerous commenters cited concern with how the period of authorized stay is determined, in the

event, for example, that a person has a visa that expires in two years but the I–94 expires in two months. One country urged DHS to accept the term of validity of the visa, which are generally valid for relatively long periods, as the ''period of time of applicant's authorized stay.''

Response: These comments cannot be accepted. Section 202(c)(2)(C)(ii) of the Act requires that the duration of the driver's license to be limited to the period of the person's authorized stay or in the case of no specific period, a duration of one year. DHS does not have the authority to amend or change this direct statutory requirement. The period of admission will be determined not by documents themselves, but with the use of the SAVE system which can best identify a person's lawful period of admission. Finally, a visa cannot be considered to be a person's period of authorized stay as a visa only allows a person to apply for admission to the United States. It does not represent, in any sense, permission to stay within the United States for any particular period of time.

Comment: Commenters said that this provision would be unduly burdensome for many individuals who have lawful status for extended periods of time, such as F and J visa holders, and specifically expressed concern that the rule is eliminating a long-standing provision for J–1 participants, who, under State Department regulations, are entitled to a thirty-day grace period after completion of their programs to travel within the United States One of these commenters suggested that States be allowed to use the end dates listed on the certificates of eligibility for each of these visa types as the ''ending date'' of status for the purpose of obtaining a driver's license.

Response: Again, the determination for lawful status in the United States will be made by the SAVE system, not particular documents. SAVE takes into account the grace periods to which those in certain F and J statuses are generally entitled. It should be noted, however, that since F and J non-immigrants are admitted for ''duration of status,'' which is an indeterminate period, they would normally be issued licenses valid for one year.

Comment: Two States said that annual, in-person enrollment for these individuals would provide little added homeland security value while overcrowding DMV offices.

Response: DHS agrees in part with these comments. The final rule provides that individuals holding REAL ID cards that are not temporary or limited-term may renew remotely where there has been no material change in the individual's information (*i.e.*, name or lawful status) and the State re-verifies the individual's lawful status and SSN where applicable. Because lawful status can change over time, DHS believes that it is necessary for a State to determine that these individuals remain in lawful status prior to extending the validity period of any REAL ID-compliant driver's license or identification card.

Comment: Three commenters asked DHS to clarify whether temporary driver's licenses and ID cards need to have the security features of REAL ID-compliant documents.

Response: Temporary or limited-term driver's licenses and identification cards qualify as REAL ID-compliant documents so they must contain the same security features as any full-term REAL ID driver's license or identification card.

Comment: One commenter asserted that temporary driver's license or identification cards should not be permitted because international and foreign licenses are valid for individuals who are in the United States for less than one year.

Response: The REAL ID Act permits States to issue temporary or limited-term driver's licenses and identification cards. States will continue to determine how long an individual must be present or have residence in a State before the State requires that person to obtain a driver's licenses or identification card. Nothing in these rules precludes States from permitting an individual to use an international or foreign license to operate a motor vehicle in a State.

Comment: Commenters had specific comments about how this annual renewal provision would affect particular groups. Several domestic abuse advocacy organizations said that the annual requirement would give more power to abusers who have confiscated or destroyed the identification documents of their victims. One commenter said that DHS needs to amend the rule because the confidentiality requirements under the Violence Against Women Act (VAWA) preclude entry of certain immigrant victims into the SAVE system. The group suggested that if yearly renewal is required of immigrant victims, it should use the fax-back system developed by the INS to verify eligibility for Federal public benefits. A State expressed concern with DHS having defined ''sexual assault,'' ''stalking,'' ''[d]omestic violence,'' and ''dating violence'' in establishing exceptions for the REAL ID requirement to display an individual's principal residence address on the license or identification card. The State argues that the proposed regulation would require that any State wishing to comply with the regulations must adopt the Federal definition of these crimes. This commenter argues that DHS can avoid this Federalism implication by allowing States to continue to decide who should be protected under address confidentiality programs.

Response: DHS agrees, in part, with these comments. The final rule clarifies any misperception in the NPRM that a State would have to adopt the VAWA definition of certain terms, and makes it clear that States can continue to enroll and safeguard victims based on their own laws. DHS disagrees with the comments that the renewal requirement conflicts with any provisions of VAWA. If an individual's identity documents have been destroyed by an abuser, a State can address this situation through its exceptions process.

Comment: AAMVA, two other commenters, and four States expressed concern with the proposed requirement that a temporary document clearly state on its face that it is temporary. The commenters said that modifying cards to comply with the proposed rule would be costly and suggested that the rule instead allow States to use a restriction code on the front with clarifying language on the back. One State requested that DHS provide the exact wording that must be displayed on the face of a temporary card. One privacy group said that identifying the card as temporary on its face would amount to a ''scarlet letter'' for immigrants and would lead to discriminatory interactions with police and other individuals. One State commented that it does not support the ''facial branding'' of cards.

Response: DHS does not agree with these comments and has clarified the rule to state that a temporary or limited-term license must indicate on the license and in the machine-readable zone that it is temporary. States may use different methods to indicate the temporary nature of the license, such as using restriction codes on the front of the card and explanatory text on the back of the card.

Comment: AAMVA and one State said that they support in-person renewals for temporary REAL ID driver's licenses or identification cards because lawful status can change and the population of individuals with temporary lawful status is far smaller and easier to manage with in-person renewals than the larger population of U.S. citizens. In contrast, one State requested that DHS allow applicants to mail in copies of the appropriate documents proving lawful status as long as the State verifies the information via the SAVE system. One

commenter suggested that foreign students be allowed to renew online if they are required to do so annually. One State questioned how many one-year terms of extension would be permitted if length of stay is not specified on a submitted Federal immigration document. Two States wrote that after an applicant obtains a REAL ID card, the applicant should not have to re-supply source documents for renewals or conversions. Several States suggested that the rule state that notice of change of address may be made on-line or by mail as long as electronic verification can be accomplished.

Response: DHS agrees with the AAMVA comment that individuals holding a temporary or limited-term license must renew in person in order to present evidence of continued lawful status. DHS believes that this is necessary because lawful status can change, and this policy is consistent with the language of the REAL ID Act. As such, the requirement remains unchanged from the NPRM.

Changes of address may be made on-line, by mail, or as otherwise permitted by the DMV. There are no limits on how many years a State can issue a one-year license or identification card to an individual who is present for an undetermined ''duration of status'' as long as that individual remains in that lawful status or another.

Comment: Numerous States expressed concern that the current processing time involved in USCIS review of applications for various immigration statuses impacted by REAL ID will result in a large number of applicants who wish to renew their licenses but their applications to extend their status has not been acted on by USCIS within the year. Two States suggested that States issue interim documents that would be valid for very short periods until an applicant receives his or her permanent document demonstrating lawful status. Another commenter suggested that such an interim card be based on the applicant's visa until authorization is received and verified through SAVE, which should be programmed to contact the querying State when there is an updated applicant status. One commenter recommended that the rule allow States to use a license expiration date 90 days beyond the expiration date of the immigration document to allow for USCIS processing of applications to extend lawful status. Commenters said that individuals in certain statuses will not be able to comply with the requirement to present documentation showing extended lawful status upon renewal because in most cases, their statuses will not have been extended but merely continued.

Response: Again, State DMVs will use the SAVE system, and not particular documentation, to determine that the license applicant is in lawful status. An application that is properly filed with USCIS entitles the person to remain in lawful status beyond the period listed on the person's Form I–94 or other immigration document, that information is reflected in the SAVE system. Thus, aliens in these situations would be able to obtain REAL ID-compliant licenses and States would not have to add any additional processes with USCIS.

I. Minimum Driver's License or Identification Card Data Element Requirements

1. Full Legal Name

Comment: Many commenters raised issues about the concept of full legal name. One commenter stated that the provision infringes on powers reserved to the States in that it dictates to the States acceptable methods for name changes, and that it effectively nullifies the common law name change process that some States permit. Proposed § 37.11(c)(2) would have required the applicant to present documents showing a legal name change, but several commenters pointed out that these documents may come from local or foreign government sources in addition to Federal and State governments. Two States opposed the proposed requirement to present these documents, and an individual opposed having name change information on the REAL ID. One State suggested that the rule also should provide instructions for individuals whose gender has been legally changed.

Response: DHS agrees that where State law or regulation permits an individual to establish a name other than that contained on the identity document he or she presents for a REAL ID driver's license or identification card, the State shall maintain copies of the documentation presented pursuant to § 37.31 and maintain a record of both the recorded name and the name on the source documents in a manner to be determined by the State. The use of initials or nicknames shall not be permitted, except to the extent that an initial is necessary to truncate a name longer than 39 characters in length, in which case the name should be truncated pursuant to ICAO–9303 standards. DHS also agrees that local or foreign government-issued documents can be used to establish a name history. The final rule reflects these changes.

Comment: Numerous States and AAMVA stated that there is no standard naming convention for Federal agencies and as a result passports, immigration documents, and social security cards list disparate names, making identifying the full legal name difficult. Many States commented that the Federal government needs to adopt a single standard for full legal name and apply it to all Federal records, rather than depending on the State DMVs to resolve this in the face of multiple Federal approaches. Due to discrepancies among naming conventions, one commenter suggested that DHS provide a list of most acceptable to least acceptable documents used to establish full legal name. Several commenters wrote that documents evidencing a name change may come from local or foreign government sources in addition to Federal and State governments.

Response: DHS agrees that there is no standard naming convention currently used by Federal agencies. It would be beyond the scope of DHS's rulemaking authority to impose such a convention on all Federal agencies. Nevertheless, the lack of a common Federal standard does not mean that DHS should not establish minimum standards for the States to follow as required by the REAL ID Act. However, based on comments received, DHS is slightly modifying the definition of the definition of ''full legal name'' to bring it closer to existing name conventions used by the Social Security Administration, the Department of State, and other issuers of source documents.

Comment: AAMVA and numerous States commented that the States need flexibility and DHS should drop the prohibition against using initials and nicknames. One State wrote that the name on the driver's license should be the one the person chooses to use, with the full legal name stored in the database and in the MRZ, and that without common naming conventions, it is imprudent to assume that a regulatory requirement forcing the public to adopt a single name will achieve any desired end. One State commented that it should be able to use an alternative name if the applicant's source documents clearly show a link between that name and the name presented on other source documents.

Response: As noted above, DHS agrees that where State law permits an individual to establish a name other than that contained on the identity document presented for a REAL ID driver's license or identification card, the State must maintain a record of how the name was established in a manner to be prescribed by the State. The use

of initials or nicknames shall not be permitted, except to the extent that an initial is necessary to truncate a name longer than 39 characters in length, in which case the name should be truncated pursuant to ICAO–9303 standards. Where the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN and NMN should not be used.

Comment: Both States and victim advocacy groups objected to the full legal name requirement because the rule would not provide exceptions for victims of domestic violence. The rule would require that past names be included in DMV records, which would expose victims to danger. In addition, the SSA requires victims to change their names before changing SSNs and prohibits them from revealing previous names and SSNs. Commenters wrote that the proposed rule conflicts with this prohibition by requiring that the previous names be revealed as well as with the court orders under which many victims are granted new identities.

Response: The REAL ID Act does not include any exceptions for victims of domestic violence not to provide their full legal names. DMVs may want to take appropriate measures to protect the confidentiality of those records so that a stalker or victimizer could not use the DMV database to locate the individual.

Comment: Many commenters noted concern with the name requirement for the MRZ, particularly inclusion of the name history on the MRZ. States questioned whether some name histories would fit on the MRZ. Others questioned the need for the requirement if the history is available in the State DMV database and cited the potential for abuse. Many also commented that the requirement would result in a complete rewrite of States' systems and is one of the most costly parts of the rule. For example, one State commented that the 125-character field would delay its implementation for 3 to 5 years until it can obtain a new mainframe.

Response: DHS agrees with the comments and is no longer requiring that the name history be stored on the MRZ.

Comment: One State asked for guidelines for translating names from other alphabets: a name in the Cyrillic alphabet can be changed to the Latin alphabet a variety of ways. Another commenter recommended referencing the AAMVA name specifications generically rather than a particular edition. The commenter also suggested changing ''Roman alphabet'' to ''Latin alphabet.'' Commenters noted other problems with the full legal name requirement, such as naming conventions in other countries and cultures, conversion of these names onto various immigration documents, and the ''Americanization'' of foreign names when living in the United States.

Response: DHS has changed ''Roman'' alphabet to ''Latin'' alphabet in the final rule. DHS is not requiring any particular transliteration method, but notes that both AAMVA and ICAO have published standards that address the issues raised in these comments.

2. Gender

Comment: Two States raised issues about how gender is determined for transgender individuals and whether gender will be included as a verifiable identifier through EVVE.

Response: DHS will leave the determination of gender up to the States since different States have different requirements concerning when, and under what circumstances, a transgendered individual should be identified as another gender. Data fields in EVVE are outside the scope of this rulemaking.

3. Digital Photograph

Comment: A number of States objected to the requirement to take the applicant's photograph at the beginning of the licensing process because doing so would require extensive changes to State processes, facilities, and vendor contracts. According to one commenter, only seven States currently take an applicant's photo at the beginning of the process. One State requested a cost-benefit analysis for taking the photograph at the start of the process. One commenter suggested using an inexpensive image capture at first, then replacing the image with the final digital photo on issuance.

Response: Under § 202(d)(3) of the REAL ID Act, States must subject each person applying for a driver's license or identification card to a mandatory facial image capture. Submission of an application for a driver's license occurs at the beginning of the licensing process, and as such, requires that the photo be taken at the beginning of the process. Additionally, from a law enforcement and operational perspective, an up-front image capture process serves as a deterrent to individuals attempting to present fraudulent documents or to ''office shop'' within a jurisdiction when their application may have been already denied in another office.

Comment: A number of commenters objected to the requirement for a color photograph because it would bar the use of laser engraving. One commenter stated that photographs are better for checking identities. However, AAMVA and other States recommended that the required image be in color.

Response: DHS agrees with those commenters that a black and white photograph should also be acceptable in order to facilitate the use of laser engraving technology by States choosing to employ this technology to deter counterfeiters, and the altering and tampering of their driver's licenses and identification cards. The final rule has been changed accordingly.

Comment: One commenter suggested that DHS replace the ICAO 9303 standard's aspect ratio with the AAMVA's aspect ratio, which is the Universal Camera Aspect Ratio.

Response: DHS believes the proposed ICAO aspect ratio, with an Image Width: Image Height aspect ratio range of 1:1.25 and 1:1.34, will accommodate the AAMVA Universal Camera Aspect Ratio of 1:1.33.

Comment: Several commenters wrote that requiring photographs could burden the free exercise of religion for some groups, such as Amish Christians and Muslim women. One commenter noted that banning the wearing of veils and scarves would require new State legislation. Another commenter asked DHS to clarify that a person may not wear any garment that affects the reliability of facial recognition technologies. Another State said the regulation should require States to refuse a license or ID to anyone who appears in disguise or distorts the face when photographed.

Response: As DHS stated in the preamble to the NPRM, the REAL ID Act requires a facial photograph, which serves important security purposes. Given these security concerns and the clear statutory mandate, DHS believes that a driver's license or identification card issued without a photograph could not be issued as a REAL ID-compliant driver's license or identification card. Many States now issue non-photo driver's licenses or identification cards based on the applicant's religious beliefs. States may continue to issue these driver's licenses or identification cards to such individuals and DHS recommends that these driver's licenses and identification cards be issued in accordance with the rules for non-compliant driver's licenses and identification cards at § 37.71.

While the final rule does not specifically address individuals who appear in disguise or who distort their face when photographed, DHS expects that States will implement their own

procedures to ensure that the photographs are accurate representations of the individuals.

Comment: Some States objected to the requirement for a profile photograph for people under 21 years of age because it will defeat biometric facial recognition systems. One commenter suggested printing the cards with a different orientation to differentiate under-21 licensees while allowing for facial recognition technologies.

Response: A typographical error in the NPRM left the misimpression that DHS was requiring a profile photograph for individuals under age 21. The final rule does not require a profile photograph for people under 21, and instead requires a full facial digital photograph.

Comment: One commenter recommended that States be required to share their images. Another State commented that the requirement to retain images of people suspected of fraud would mean that they had to keep all images because the suspicion of fraud may occur long after the license is issued, and data storage costs would be significant.

Response: DHS agrees that there would be substantial value in preventing the acquisition of multiple identity documents if States were able to exchange images of their license holders with one another. DHS believes that the States have the same interest and therefore States must ensure that the same individual does not have multiple driver's licenses or identification cards from the same State. DHS also encourages States to participate in AAMVA Fraud Early Warning System (FEWS) or similar system for exchanging information on fraud or attempted fraud in the issuance of driver's licenses or identification cards. DHS believes that the volume of images of individuals who start, but do not complete the application process, will not be so great as to impose substantial data storage costs on the States.

4. Address of Principal Residence

Comment: One State noted that it has a ''homeless exception'' to its proof of residency requirement where proof of residency documents are waived if the applicant provides a letter, on letterhead, signed by the director of a homeless shelter, certifying that the individual is homeless and stays at that shelter. It suggested that this be an acceptable action under an ''exceptions process'' for the homeless. Other States voiced concern that the rule does not address the ''truly homeless,'' those not living in a shelter.

Response: DHS agrees that a letter, on letterhead, signed by the director of the homeless shelter, certifying that an individual is homeless and stays at that shelter, should be sufficient to establish an individual's address of principal residence under a State's exceptions process. As noted above, States have wide latitude to address issues concerning an individual's address of principal residence within their State-specific exceptions process.

Comment: AAMVA, other commenters, and many States commented that DHS allow States the authority to provide for the confidentiality of individual's address of principal residence, including the categories of individuals who would be subject to the address exception. One commenter suggested that DHS devise standard rules governing address confidentiality rather than allowing each State to devise separate and unique requirements. One State claimed that a confidential address program is unnecessary.

Response: DHS agrees that States should have broad authority to protect the confidentiality of the address of principal residence for certain classes of individuals. DHS has added additional clarifying language in the final rule that should help to alleviate any uncertainties.

Comment: Numerous commenters claimed that the confidential address provision in the rule did not address all individuals who may have legitimate reasons for protecting their addresses from public disclosure. Commenters noted that § 37.17(f)(1) was too narrow and would not qualify individuals who would otherwise be protected under State law. Several States recommended additional address exceptions for the following categories: sitting and former judges, Federal officials in limited circumstances, covert law enforcement officers as long as the officer provides a letter of authorization, State administrative personnel engaged in law enforcement, participants in the witness protection program, and victims of domestic violence. One commenter stated that the exemption should include family members when laws or court orders suppress the addresses of those individuals.

One commenter claimed that the partial exemption to the principal address requirement is inadequate by removing the option of not listing an address and relying solely on State laws that cover a limited number of individuals. The commenter noted that only 24 States have confidentiality programs in place, which is a requirement for the exemption to apply. Victims in the remaining jurisdictions will not be protected unless they can obtain a court order suppressing their addresses. Another commenter wrote that States have created formal address confidentiality programs and have also provided general measures of residential address privacy and this rule overrides these substantial protections.

Response: As noted above, DHS agrees that States should have broad authority to protect the confidentiality of addresses. DHS has clarified language in the final rule so that it is clear that a DMV may apply an alternate address on a driver's license or identification card if the individual's address is entitled to be suppressed under State or Federal law or suppressed by a court order including an administrative order issued by a State or Federal court.

Comment: A few States claimed that use of alternative addresses is justified on the REAL ID cards, but that the principal residence must be captured and stored in a secure database. They requested clarification from DHS on how States would meet the requirements related to the protection of the principal residence addresses. Another State noted that it has no confidential address program, but it permits a post office box to be displayed on the identification document if requested, but again it retains the permanent address in a database. One commenter stated that the better level of protection would be to note in the MRZ that the individual's address is protected and provide a pointer to whatever relevant authority handles those addresses for that jurisdiction. This process would also serve a secondary purpose in that anyone seeking the address would make a request that could be logged and validated.

Response: DHS agrees that an individual's true address must be captured and stored in a secure manner in the DMV database even if an alternate address appears on the face and MRZ portions of the driver's license or identification card.

Comment: One commenter recommended that the final rule allow courts to issue administrative orders suppressing the collection of REAL ID information or its display on identification documents in any jurisdiction where the legislature has not acted to protect privacy.

Response: DHS agrees with this comment and has changed the final rule to reflect that an address may be suppressed by a court order including an administrative order issued by a State or Federal court.

5. Signature

Comment: Two States and another commenter stated that the rule needs to allow for people who cannot sign the card, such as minors, and older or disabled persons. If States use a signature match, an alternative process must be available.

Response: DHS agrees with these comments. Section 37.17(g) now provides that a State ''shall establish alternative procedures for individuals unable to sign their names.'' This language gives the States wide latitude in how to address situations where an individual is unable to sign his or her driver's license or identification card.

6. Physical Security Features

Comment: Numerous States and other commenters stated that DHS should provide security objectives or performance standards, and not specify particular technologies, materials, or methods. AAMVA wrote that States are using the AAMVA Driver Licensing/Identification Card Design Specification as the minimum standard and to change direction now would be costly for States. AAMVA further commented that restricting all State-issued driver's licenses and identification cards to a single security configuration could introduce new security vulnerabilities rather than protect the driver's licenses and identification cards against fraud. AAMVA wrote that it is not aware of any jurisdiction that uses all the listed security features with the proposed card stock in its card design or production. Numerous commenters stated that the proposed requirements would eliminate over-the-counter issuance systems and place an unnecessary financial burden on States.

Response: DHS understands that there are challenges States may face in producing secure driver's licenses and identification cards. The final rule removes requirements to use specific technologies, and provides the flexibility for States to implement solutions using a combined set of security features that provide maximum resistance to counterfeiting, alteration, substitution, and the creation of fraudulent documents from legitimate documents. DHS will work with stakeholders to develop performance standards and a methodology for adversarial testing.

Comment: Commenters were concerned that DHS was not targeting its security enhancement properly, and that increased security features would not accomplish the goal of reducing fraud. AAMVA and another State commented that major DMV fraud and abuse issues are not associated with the cards, but with source documents that cannot be verified, system breakdowns, and people who breach integrity. Another State commented that unless airports, Federal facilities, and nuclear plants have document authentication systems, implementation of REAL ID is without purpose. One State also stated that unless inspectors are trained in fraud detection or equipment is available for detection, fraud will continue. One commenter recommended that the AAMVA fraudulent document recognition training be used.

Response: DHS agrees, generally, that no single solution eliminates all fraud relating to an identity document. That is why the NPRM proposed, and the final rule requires, steps to improve internal procedures at DMVs as well as the physical driver's license or identification card issued by the States. DHS agrees that fraud detection training is an important element in an anti-fraud regime and endorses the use of AAMVA's fraudulent document recognition training or equivalent by the States.

Comment: AAMVA stated that States cannot consider making any changes until existing contracts with card integrators expire or they will face high penalties for breaking existing contracts; any change would require States to proceed though the competitive bidding processes, evaluate proposals, award new contracts, and implement the complex and expensive process of re-engineering their issuance processes. Any wholesale change in card design will be costly, complex, and time consuming. Several States also noted that contractual processes will slow implementation.

Response: DHS understands that existing vendor contracts make it difficult for some States to make changes during the term of their card contracts. The final rule provides flexibility in card solutions. DHS will require States to take appropriate measures to issue driver's licenses and identification cards that are resistant to tampering, alteration or counterfeiting.

Comment: Commenters, particularly States that issue driver's licenses and identification cards ''over the counter,'' objected to check digit specification, unique serial number, application of variable data, and laser printing. One commenter supported associating card stock serial number with a customer. One State agreed with incorporation into the card of taggant (a radio frequency identification chip) and marker, but said that only State employees need to know if the State is using such embedded technology. One State noted that it uses seventeen overt, covert, and forensic security features to make counterfeiting difficult; it recommended that States use different designs and combinations of security features to deter counterfeiters. One commenter wrote that the proposed rule includes a requirement for an optically variable feature and suggests that a ''diffractive optically variable feature'' be included to enhance protection. The commenter said it is unclear how this feature enhances protection over existing State-issued driver's licenses and identification cards as many already use such technology. The commenter recommended optically variable ink as a security feature. This ink technology, currently used in U.S. passports and outlined in the FIPS 201 security standards, is not reproducible using commonly used or available technologies, and requires much less training to authenticate quickly. No readers or special equipment are required to observe the color shifting effect, meeting the requirements in the proposed rule for a Level 1 security feature. Additional forensic security, such as micro-flakes with etched on numbers, logos or words that are visible under low-power magnification can be included in the micro-flakes of the overt optically variable color shift technology, meeting the requirements in the proposed rule for Level 2 and Level 3 security features.

Response: The final rule provides for a performance-based, not prescriptive, approach to card solutions. Specific security requirements are not mandated in the rule. However, the final rule includes requirements for three levels of document security designed to provide maximum resistance to counterfeiting, alteration, substitution, and the creation of fraudulent documents from legitimate documents that are not reproducible using common or available technologies. DHS encourages States to explore the range of existing and still-to-be developed technologies in this area. The final rule requires States to use card stock and printing materials that are not widely available commercially in order to significantly decrease the likelihood that a driver's license or identification card could be easily counterfeited or altered.

Comment: One commenter recommended inclusion of a digital signature as a Level 3 security feature.

Response: The final rule provides for performance-based, not prescriptive requirements for implementation. While digital signatures offer a higher level of security, States may choose to invest in other, similarly secure technologies.

DHS encourages States to consider the use of this and other security features.

Comment: States asked for clarification as to the meanings of ''inspector,'' ''microline text,'' ''micro print,'' ''external surfaces,'' ''taggant,'' and ''marker.''

Response: DHS has removed the requirements involving these terms, so does not need to clarify these terms.

Comment: Two commenters stated that security features should not make it impossible to copy or create a digital image of a license, and that the rule should make it clear that any print on the image must not obscure the features. One State asked that DHS remove language forbidding reproducible security features and retain § 37.15(f)(2).

Response: DHS agrees that the security features employed should not make it impossible to copy or create a digital image of a license. Many private sector industries, including the banking sector, often need to reproduce and retain a copy of an individual account holder's driver's license or identification card. DHS also agrees that print on the image should not obscure the individual's features.

Comment: One commenter recommended incorporating some security features in the substrate.

Response: The final rule requires level 1, 2 and 3 security features that provide multiple layers of security, and States may adopt security features that meet their needs, including incorporating security features into the substrate.

Comment: One commenter stated that requiring a color photo and laser printing means that two printers will be needed.

Response: The final rule allows for either a color or black and white photograph. Laser engraving, while a very effective security measure, is not a requirement of this rule.

Comment: One State commented that it currently uses adversarial testing for its cards and provided detailed information on its process. AAMVA and several States said that there are no adversarial testing standards and that DHS should develop them and either take responsibility for testing the cards or certify the testing organizations. Another commenter recommended that there should be a single center for adversarial testing using a single set of criteria to avoid the undue influence of vendors and disparate standards. Some States suggested alternatives to adversarial testing, such as card design security programs or security audits. One commenter suggested that adversarial testing occur only if the State card has changed rather than annually. Another commenter recommended testing every five years or at contract changes.

Response: The development of standards and adversarial analysis and testing of driver's licenses and identification cards is an effective approach to ensuring that these documents provide maximum resistance to counterfeiting, simulation, alteration and creation of fraudulent driver's licenses and identification cards. DHS will work to develop performance standards and adversarial analysis and testing.

Independent adversarial testing is an important tool in limiting the ability of someone to tamper, alter, or counterfeit a driver's license or identification card. DHS agrees with the comments that there are no recognized testing standards to date and a lack of available and accredited testing facilities. Therefore, DHS has removed the requirement for States to obtain an independent adversarial test of their card security.

Comment: Numerous commenters objected to the card stock requirement, stating that the NPRM design specification essentially calls for polycarbonate material and AAMVA and its members do not support polycarbonate as the only option for the cards. This material is not used anywhere in the United States today, is the highest cost card material in production today, and is only available from a limited number of vendors, which negates State requirements for competitive bidding. Another commenter noted an inconsistency between polycarbonate card stock and the requirement to meet ICAO 9303. The ICAO standard requires a color photo, but polycarbonate card stock allows only black and white photos.

Privacy groups supported use of polycarbonate cardstock in conjunction with laser engraving because laser engraving on other card stocks may be removable. One commenter indicated that other stocks would function as well. Another commenter stated that requirements for card stock durability should be based on the renewal period used by the State. One State asked to whom missing card stock should be reported.

Response: The final rule reflects a less-prescriptive approach to card security, and does not mandate the use of a specific card stock and prescriptive security features. The final rule requires States to use card stock and printing methods that are not widely available commercially in order to significantly decrease the likelihood that a driver's license or identification card can easily be counterfeited or altered. States should develop and utilize a system of reporting missing card stock and other secure supplies and equipment related to the production of driver's licenses and identification cards to other State DMVs and law enforcement.

7. Machine Readable Technology

Comment: Privacy groups and several States recommended laws limiting the collection and storage of Machine Readable Zone (MRZ) data by third parties. Several other States commented on the importance of accessibility for law enforcement and noted that the same information is available on the front of the identification cards in human-readable form. Some commenters wanted MRZ access restricted to law enforcement, while others supported also providing access for bars and liquor stores to help prevent underage drinking but limiting their collection and storage of the personal information. One commenter stated that nothing in the REAL ID Act authorizes Federal agencies to read and collect information contained in the MRZ and cited to the Conference Report statement that the MRZ must only be able to be read by law enforcement officials. One commenter opposed any indication in the MRZ that a person was an owner or buyer of firearms or was licensed to carry a firearm; the commenter also asked that DHS forbid the inclusion of this information unless required by State law.

Response: The REAL ID Act does not provide DHS with authority to prohibit third party private-sector uses of the information stored on the REAL ID card. As noted in the proposed rule and the PIA issued in conjunction with the rulemaking, at least four States (California, Nebraska, New Hampshire, and Texas) currently limit third-party use of the MRZ, and AAMVA has issued a model Act limiting such use. DHS encourages other States to take similar steps to protect the information stored in the MRZ from unauthorized access and collection. In response to commenters urging that the rule limit Federal agency access to the MRZ, DHS is not aware of any current plans by Federal agencies to collect and maintain any of the information stored in the MRZ. If a Federal agency should decide to use the MRZ to collect and maintain personally identifiable information in the future, any such information collected from the MRZ will, of course, be subject to the protections of the Privacy Act and other Federal laws and policies regulating the use and handling of personally identifiable information. This final rule does not require (and the NPRM did not propose) that the MRZ

contain any information about firearm ownership.

Comment: Many commenters suggested data elements that should or should not be in the MRZ. AAMVA stated that the final rule should limit the MRZ elements to those set out in its driver license card design standard. Another commenter wrote that DHS should set the minimum data elements in the MRZ at zero and the maximum at full legal name, date of birth, and license number. Other commenters stated that data on the MRZ should be limited to what is on the face of the document. One State recommended inclusion of the issuing State in the MRZ to facilitate the routing of NCIC inquiries by law enforcement agencies using in-car bar code reading equipment. Another commenter suggested limiting the MRZ data to a pointer that does not correspond to the ID number that would link to a database limited to law enforcement. One commenter recommended including the digital image in the MRZ using the ISO/IEC 18013–2 standard. Two States opposed including an inventory control number (ICN). One commenter objected to the PDF standard because the NPRM preamble had referenced adopting most of the data elements in the 2005 AAMVA Driver's License/Identification Card Design, which includes coding for race.

Response: The final rule mandates that the States use the PDF417 2D bar code standard with the following defined minimum data elements: Expiration date; holder's legal name; issue or transaction date; date of birth; gender; address; unique identification number; revision date (indicating the most recent change or modification to the visible format of the license or identification card); inventory control number of the physical document; and State or territory of issuance. The proposal in the NPRM to include the full name history, including all name changes, has been dropped. Race is not a data element contemplated in this rulemaking and the reference in the NPRM to the AAMVA standard was not intended to include race as a data element in the MRZ for REAL ID.

The majority of commenters on the issue of data elements recommended limiting the data elements to those needed by law enforcement and the DMVs to carry out their duties. The final rule sets the minimum elements to include, but recognizes the authority of the individual States to add other elements such as biometrics, which some currently include in their cards.

Changes in technology in the future may enable the States to reduce the elements to a pointer that would electronically link to a database and provide only authorized parties access to information that today is stored in the MRZ. The current technology available to State DMVs and most law enforcement officers, however, does not provide that capability.

Comment: Several commenters said the 2D barcode is easily copied and reproduced. One commenter supported the 2D barcode, but noted that it is not meant to be a security feature; the 2D barcode does not allow an upgrade of an encryption scheme, does not employ dynamic forms of authentication, does not store audit trails, and does not use other security features. One commenter stated that the rule for the barcode was insufficient, particularly that there was no barcode standard specified which would facilitate the common machine readable technology requirement mandated by the REAL ID Act. Two existing standards could provide the basis for what is needed: One is the AAMVA format and the other is the format in the draft of part 2 ISO standard 18012. However, the proposed rule required fields that are specified differently or are just not in either of these standards. One commenter objected to the standard because the selected version includes coding for race. One commenter stated that mandatory requirements make it difficult to keep up with technology. A security group and one State stated the bar code should include a revision date.

Response: DHS recognizes that a 2D barcode may have security vulnerabilities and technology limitations compared to other available technologies. However, the PDF417 2D barcode is already used by 45 jurisdictions and law enforcement officials across the country. A different technology choice could hamper law enforcement efforts and may pose an additional financial burden on the States. DHS supports efforts of States to explore additional possible technologies in addition to the PDF417 2D barcode.

DHS disagrees with the notion that the standard selected should be rejected because it includes coding for race. DHS has never stated that race should be encoded on the license, and specifically stated in the proposed rule that it was not incorporating wholesale the card data elements currently required by AAMVA.

Comment: One commenter supported the decision to omit an RFID device. It stated, however, that the NPRM does not discuss what information from a card should be made available digitally and what purpose it would serve.

Response: DHS is not requiring that States employ RFID in REAL ID Act cards; rather the only technology required by the final rule is the use of the PDF417 bar code, which most States already use on their cards. The information stored on the MRZ enables law enforcement officers to compare the information on the MRZ with the information on the front of the card to determine whether any of the information on the front has been altered and to automatically populate law enforcement reports, increasing officer safety. The ability to run the MRZ through a scanner device also enables an officer to quickly retrieve the information on the card and request from their dispatch office additional information on the individual, while maintaining visual contact with a suspect, a safety consideration for the officer.

8. Encryption of MRZ Information

Comment: Commenters were divided on whether some or all data in the MRZ should be encrypted. In general, groups concerned with privacy issues supported encryption, although one commenter argued that encryption would provide a false sense of security. Three States supported encrypting MRZ data. Groups supporting encryption cited the following:

—The capture of data by other users, such as financial, retail, or commercial institutions that could retain, use, and sell the personal data.
—The possible inclusion of additional private information in MRZ, such as residential address, race, [trans]gender, or legal name history that could expose the holder to harm if captured and revealed.
—Congressional intent to limit use of the data to law enforcement.

Some commenters stated that if DHS does not mandate encryption, it should at least not prohibit it. Others supported encryption of only some data, specifically data not available on the front of the card. One supporter stated that DHS should have done a comprehensive analysis of encryption systems and their costs and presented that data.

Numerous other commenters, including the States and AAMVA, opposed encrypting the data. Other commenters were divided among those who believed it is feasible to encrypt the data, those who considered it infeasible, and those who offered alternative technologies, particularly smart cards and public key infrastructure. Commenters opposing encryption cited the following reasons:

—The difficulty of managing encryption keys that could be used to decrypt any REAL ID. If a single key was used, once the key was compromised, every driver's license issued with the key would be insecure. If multiple keys are used (e.g., different keys for each State), then every law enforcement agency would have to be able to access all of the keys. Multiple keys would limit the threat because key compromise would affect fewer driver's licenses, but would increase the difficulty of using the MRZ data across the country. Once a key is compromised, any license issued using that key would have to be replaced to be secure.
—The cost of systems for law enforcement. The costs cited included the cost to replace existing readers plus the cost of setting up an encryption system and the ongoing costs of managing keys.
—The additional time required for law enforcement. Particularly if multiple keys are used, law enforcement and DMV officials may need more time to read the data. This added time requirement would limit the ability to check the validity of documents quickly, particularly those from other States.
—The inability of non-law enforcement to use the data to verify the validity of the information on the face of the card. Businesses also use the MRZ data to determine if the document is genuine. Eliminating that ability would harm businesses that rely on the driver's license and would affect the ability of restaurants and bars to confirm ages. These businesses can help identify criminal use of false documents using the MRZ. Some commenters argued that the government should set limits on the retention and use of the data rather than encrypt the MRZ.
—The futility of encrypting data present on the front of the card. Commenters stated that if the data included in the MRZ are readable on the front of the card, encrypting the MRZ provides no protection because optical scanning readers are capable of translating the card data into a database. The information can also be copied or transcribed.

Response: DHS considered the many comments on this issue and acknowledges that the skimming of the personally identifiable information from the MRZ raises important privacy concerns. Nevertheless, given law enforcement's need for easy access to the information and the complexities and costs of implementing an encryption infrastructure, no encryption of the MRZ will be required at this time. If the States collectively determine that it is feasible to introduce encryption in the future, DHS will consider such an effort, as long as the encryption program enables law enforcement to have easy access to the information in the MRZ. Moreover, DHS, in consultation with the States, DOT, and after providing for public comment, is open to considering technology alternatives to the PDF417 2D bar code in the future to provide greater privacy protections.

J. Validity Period and Renewals of REAL ID Driver's Licenses and Identification Cards

1. Validity Period

Comment: At least two commenters said that the proposed eight-year validity period is too long, because it would give counterfeiters and forgers too much time to learn how to simulate or alter cards in circulation. The groups recommended that DHS require States to adopt a validity period of no more than five years. AAMVA and one State said that State DMVs should be allowed to determine the duration of their licenses based on business processes and needs. A few States said that a validity period of no more than eight years would create difficulties for elderly and some disabled persons who are clearly not national security risks. These States asked for the flexibility to grandfather these populations or to issue cards with extended validity periods.

Response: The REAL ID Act establishes a maximum license validity period of eight years. Nothing in the Act or the rules precludes a State from adopting a shorter validity period for business, security, or other needs.

2. Reverification of Source Document Information

Comment: AAMVA and several States expressed strong opposition to the requirement that States re-verify information and source documents for renewals and replacements of driver's licenses and identification cards. They said that this requirement would be costly, burdensome, and unnecessary in part because of the processes that many States already have in place for renewals and replacements. In addition, some commenters claimed that the requirement to re-verify source documents such as address documentation is impossible to comply with because there is no electronic system to do so. One State DMV pointed out that because Federal and State databases are not updated in real time, it is likely that changes would not be immediately verifiable.

One State supported requiring re-verification of birth certificates because changes to the birth certificate, such as a name change, could be made after the original birth certificate verification occurred. This suggestion would also allow for matching against State death information to prevent fraud. Another State endorsed the re-verification of information for temporary REAL ID licenses and for driver and ID card holders who do not have Social Security numbers.

Response: DHS agrees with the comments that it is not necessary to re-verify all source documents at renewal. DHS proposed this requirement in the NPRM since it recognized that the quality of recordkeeping in both Federal and State databases would improve over time. Instead DHS has amended the rule to require reverification of SSN and lawful status prior to renewal and verification of information that the State was previously unable to verify electronically.

Comment: Several State DMVs asked DHS to clarify exactly what they would need to do to ''re-verify'' information. For example, one State asked if States would be required to verify each source document and imaged piece of information if electronic verification systems were not available at the time of initial enrollment. One State asked if States could use original source documents to re-verify applicant information if the documents have expired since the date of original verification. Another State asked DHS to explain the difference between ''verified'' and ''validated'' as referenced in § 37.23(b)(1)(ii) of the NPRM.

Response: As noted above, DHS is not requiring States to re-verify source documents at renewal. However, States must reverify the SSN and lawful status upon renewal and electronically verify information that the State was previously unable to verify electronically.

Comment: AAMVA said that DHS should allow States to determine if they want to re-verify information that has already been verified by another State. AAMVA said that the new State of residency should be able to determine whether to ''re-vet'' an applicant's information. One State requested that DHS allow a license transferred from another State to be renewed or replaced remotely, even if the new State of residence does not have electronic copies of the applicant's identity documentation. One State said that the renewal of a REAL ID-compliant card should only require the minimum

combination of a REAL ID document and some proof of address. Another State suggested that States be allowed to exempt from re-verification applicants who have been verified at initial enrollment as U.S. citizens and who have had no changes to name or Social Security information. A few commenters mentioned that a birth certificate should not be re-verified if there was a copy of it maintained at the DMV.

Response: The NPRM did not propose any requirements for how a State should treat a REAL ID issued by another State except to propose that a REAL ID driver's license or identification card be accepted as an identity document, to establish name and date of birth. When an individual moves from one State to another, the new State would still be required to verify the individual's SSN and ensure that he or she is lawfully present in the United States

3. Renewals

Comment: AAMVA recommended that § 37.23 be entirely stricken except for paragraph (b)(2)(iii) of the NPRM, which would require holders of temporary REAL ID cards to renew them in person each time and to present evidence of continued lawful status.

Response: DHS disagrees with the comment and believes that it is necessary to have standards governing the renewal of a REAL ID-compliant driver's license or identification card.

Comment: One commenter wrote that the rule would make it far more difficult and expensive for current holders of a commercial driver's license (CDL) to renew or replace their licenses, that delays and the expense in having a license renewed or reissued are particularly important for this segment of the population, and that they might force drivers to seek other employment altogether.

Response: DHS disagrees with this comment. DHS has not been presented with evidence that CDL holders will be affected disproportionately by the REAL ID requirements or that the REAL ID requirements will force commercial driver's license holders to seek other employment.

Comment: Commenters expressed strong opposition to the restriction that remote transactions would be allowed only if ''no source information has changed since prior issuance'' (§ 37.23(b)(1) of the NPRM). In particular, many States, AAMVA, and other commenters wrote that applicants should be able to make address changes without having to appear in a DMV office, and that only material changes (e.g., name change) should prompt the need for an in-person visit. In general, commenters wrote that they do not currently require an office visit for address changes, and some said they do not issue a new card when notified of an address change. They said that requiring in-person visits for address changes would dramatically increase the number of visitors to DMV offices, with huge cost increases for State agencies (which some DMVs said the Federal government should cover), without necessarily improving national security. Some States further commented that making address changes more difficult for customers will result in these individuals simply not notifying the motor vehicle department of new addresses, which creates greater problems for State and local government and law enforcement.

Response: DHS agrees with these comments and has removed the requirement that an address change must be accomplished through an in-person visit to the DMV. Additionally, there is no requirement in the final rule for States to issue a new card when notified of an address change.

Comment: DHS received several comments on some of the methods listed in the preamble for authenticating identity prior to issuing a renewed license.

Response: Since DHS is only requiring that States establish a procedure to ensure that the proper individual is receiving a renewed document and is not requiring any specific method, these comments are not discussed as they are deemed outside the scope of the regulation.

Comment: AAMVA commented that the requirement that every other renewal take place in-person to allow for an updated photo would penalize residents of States with shorter renewal cycles. One State suggested that § 37.23(b)(2) of the NPRM should be changed to require in-person renewals and recapture of a digital image once every sixteen years, regardless of the period of validity of a State's cards. Two commenters stated that allowing sixteen years between photo updates might be too long because a person's appearance can change significantly during that time, and that the usefulness of the photos for facial recognition (manual or computerized) would greatly diminish over a sixteen-year time period. One State recommended that DHS adopt a ten-year in-person renewal cycle. Two States commented that exceptions to in-person renewals should be established for active military and the elderly.

Response: DHS disagrees with the comments and is retaining the requirement that a new photo be taken at every other renewal of a REAL ID driver's license or identification card. Enabling States to maintain their own renewal cycles permits States to plan for the flow of people through the DMVs. While DHS agrees that an individual's appearance can change significantly over sixteen years, DHS has concluded that an every-other-cycle photo requirement will meet State needs to reduce in-person visits at the DMVs while not posing an unacceptable security risk. States are free to impose a more frequent photo requirement.

4. Reissuance of Documents

Comment: One State said that it would be overly burdensome to require all applicants for replacement driver's licenses or ID cards resulting from lost, stolen, or mutilated documents to personally appear at a DMV office. Another State wrote that, in many instances, the affected customer will not have the supporting documents readily available, which may result in some individuals driving without a license.

Response: DHS agrees with the comments. In the final rule, States may replace a lost, stolen, or mutilated document without requiring an in-person transaction. Current State practices will dictate what documentation needs to be presented for replacement driver's licenses and identification cards.

Comment: Some States, AAMVA, and several other commenters recommended against requiring a new card for address changes and asked that DHS allow States to propose interim methods of tracking address changes between renewal cycles without the requirement for issuance of a replacement card (unless State law requires it).

Response: DHS agrees with the comments. The final rule does not mandate that a State reissue a driver's license or identification card for an address change unless otherwise required by State law.

Comment: A number of States suggested that the definition of ''reissued'' be changed to indicate that the license contains material changes to the personal information on the document. An applicant for a ''reissued'' document would be required to personally appear at a DMV office to provide proof of the change. Furthermore, the State suggested that DHS create a definition of ''duplicate'' as a card that was issued subsequent to the original document that bears the same information and expiration date as the original.

Response: DHS agrees with the comments. The final rule does not mandate a personal appearance at a

DMV for a reissued driver's license or identification card unless material information, such as name or lawful status, has changed. The final rule adopts the proposed definition for a duplicate card.

K. Source Document Retention

Comment: AAMVA expressed concern about the proposed requirements dealing with transferring document images and linking document images to the driver record, and opined that the requirement to color scan and exchange documents using AAMVA's Digital Image Exchange program is misplaced. Another commenter stated that this program deals only with photos and that ''it would be a giant leap to consider its use for documents.'' Several commenters objected to the costs of purchasing scanners, using computer storage space, retaining color images, and integrating the image into the driver record. Some commenters believed the document retention period should be the same for paper copies and electronic storage, while others believed that the retention period for paper copies should be shorter than electronic. A few commenters pointed out that the Driver Privacy Protection Act and State laws had their own record retention requirements. Some commenters objected to the storage of documents containing sensitive personal information as such documents are attractive target for criminals and hackers, and thereby pose significant privacy and security risks.

Response: The specific record retention period for imaged documents and paper documents is required by the REAL ID Act and the final rule applies those time periods. However, DHS agrees with the comments that some source documents may contain sensitive personal information and has modified the document retention requirements for birth certificates. Under the final rule, a State shall record and retain the applicant's name, date of birth, certificate numbers, date filed, and issuing agency in lieu of an image or copy of the applicant's birth certificate, where such procedures are required by State law and if requested by the applicant.

L. Database Connectivity

Comment: AAMVA stated that DHS has yet to provide specific information on how this ''query'' system will work and does not expect to provide that information until the comment period is over. AAMVA wrote that final rulemaking should not take place until there is opportunity for another round of comments and an extension of compliance dates.

Privacy groups argued that the proposal does not define security standards or a governance structure for managing any of the shared databases and systems. In their view, this abdication places the States in an impossible position: they are being forced to make their own citizens' personal information available to every other State with no guarantee of privacy or security.

One commenter recommended that the PCI Data Security Standards that apply to the credit card industry should be applied to DMV databases. One group suggested a decentralized query system that allows States to check all other States to see if an applicant already holds a REAL ID and returns a yes or no answer, rather than providing detailed data. One commenter recommended audit logs and audits to ensure compliance with privacy policies.

Response: DHS has provided a brief overview of the proposed architecture for data verification and State-to-State data exchange in the sections above. This architecture will likely build on the existing architecture of AAMVAnet and the systems design principles of its hosted applications. The proposed architecture will also build upon the security, privacy and governance principles that have guided AAMVA and the States for decades.

In addition, DHS will work with DOT, AAMVA and the States to reinforce the security and privacy features of this communications and systems architecture.

Comment: A commenter stated that DHS had exceeded its authority in the requirement that interstate access must be ''in a manner approved by DHS.'' This commenter stated that since the rule does not describe, even in general terms, what the approval is based upon, States are left to guess at the DHS criteria for approval. Since the database exchange and the connectivity thereto are of utmost importance to States, the conditions upon which approval will be based need to be specified in the rule. They should not be provided by some yet to be developed guideline issued by DHS after the rule has become final.

Response: DHS will work with DOT, AAMVA, and the States to develop a path forward for both verification systems and State-to-State data exchange, including criteria DHS will employ to evaluate the adequacy, security, and reliability of such data exchanges.

M. Security of DMV Facilities Where Driver's Licenses and Identification Cards Are Manufactured and Produced

1. Physical Security of DMV Facilities

Comment: A few States said the security requirements would force closure of many DMV offices. At least one State said that the security requirements would lead to closure of remote offices, and that this could lead the State to opt out of complying with REAL ID requirements.

Response: In general, DHS does not agree with comments that indicate a State would prefer to have a security vulnerability rather than take the necessary steps to close it. There have been a number of well-documented instances where DMV offices have been burglarized and the equipment and supplies to manufacture driver's licenses and identification cards taken, highlighting the need to ensure that adequate procedures are in place to protect the equipment and supplies necessary for the production of REAL ID driver's licenses and identification cards. Protecting these materials and equipment are critical to reducing the possibility of fraud and identity theft.

Comment: While a few States supported the proposed ANSI/NASPO–SA–v3.OP–2005, Level II standard, numerous States said that this standard was intended to apply to manufacturing facilities, not to the issuance of driver's licenses. The commenters opposing use of the ANSI/NASPO standard stated that until a reasonable standard is developed, States should have the flexibility to determine what works for their issuance processes. Privacy groups are concerned that without a uniform standard, States could have 56 different security and privacy policies with different levels of protection.

One State supported a narrow application of the ANSI/NASPO standard only to the DMV facility containing the database on license holders, while another State thought that the standards should apply only to the DMV production facilities. One commenter wrote that the NASPO standard needs to be reviewed every two years and that requirements should be added throughout the supply chain.

Response: DHS agrees with the comments that the proposed NASPO standard may be more appropriate to manufacturing and production facilities, as opposed to issuance sites. DHS is not requiring the use of the ANSI/NASPO standard in the final rule, but commends to the States the proposed standards as a good practice for securing materials and printing supplies.

Comment: One commenter proposed additional requirements for alarm systems, disposals, and suppliers. Another commenter suggested allowing DMVs to secure part of a building, rather than the whole building. The commenter wrote that the standard did not address the security of work stations and recommended biometric passwords. One commenter noted that providing the license directly to the person, rather than mailing it, was more secure; one State noted that the Post Office does not guarantee delivery.

Response: The final rule specifies what must be addressed in a security plan, including physical security of the buildings used to produce driver's licenses and identification cards, storage areas for card stock and other materials used in card production, and security of Personally Identifiable Information (PII).

If a DMV is located in a building shared by other offices or tenants, the area dedicated to the manufacture or issuance of driver's licenses and identification cards, storage of card stock and related materials, and PII must be secured in such a fashion to prevent unauthorized access. This requirement covers any equipment utilized to produce driver's licenses and identification cards as well as storage, access and retrieval of PII. States will determine how these items are protected in their security plans.

The rule does not mandate central issuance versus over-the-counter issuance.

2. Security Plan

Comment: One State said that DHS had exceeded its authority under the Act in the requirement that a State's security plan address ''reasonable administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of * * * personal information stored and maintained in DMV * * * information systems.'' Another State wrote that the Act does not authorize DHS to compel States to establish or make available standards or procedures for safeguarding the information collected by motor vehicle agencies. AAMVA asserted that tools such as information security audits, individual employee access audits, employee confidentiality polices, and privacy and security plans are already used in many DMVs.

Privacy groups commented that the rule must provide meaningful privacy and security protections and that the lack of clear privacy and security guidance in the Act does not preclude DHS from providing strong protections in the regulations. In fact, they urged DHS to include specific standards or minimum criteria against which the State plans could be evaluated.

At least two States objected to the provision that DHS could require ''other information as determined by DHS.'' The States argued that any further requirements should be agreed upon and clearly identified in the regulations. One State said that unspecified requirements should not be left to DHS to develop outside of the regulatory process. Another State wrote that the access badge requirement is unrealistic.

Response: DHS believes that it has the authority to require States to take reasonable measures to safeguard the confidentiality of PII maintained in DMV information systems pursuant to the REAL ID Act. DHS believes that inherent in the Act's requirement that States must provide electronic access to the information contained in their databases is the principle that such information must be protected, and this concept is supported in the legislative history for section 202(d) (12) of the Act which states that ''DHS will be expected to establish regulations which adequately protect the privacy of the holders of licenses and ID cards * * *.'' H.R. Rep. No.109–72, at 184 (2005) (Conf. Rep). Failure to protect the PII held in DMV databases could result in identity theft and undermine the very purpose of the Act, which is to strengthen the validity of the cards. DHS also believes that it can require States to provide other, reasonable information that DHS determines is necessary in the future without requiring future rulemaking.

Comment: AAMVA and several States requested guidance on what ''written risk assessment of each facility'' means and a template. Another State asked for guidance on which law enforcement officials should be notified. One State recommended that the rule limit the amount of data in any State's database and create stronger protections for information to limit the danger of aggregating information on 240 million Americans.

Response: DHS, DOT, AAMVA and the States will work together to develop best practices for risk and vulnerability assessments as well as for security plans for DMV facilities.

Comment: A trade association objected to the lack of standards for the security plan and further stated that because the State databases must be interconnected, the lack of standards would mean that the weakest plan implemented by any State would put all States at risk. DHS should require clear, strong, and verifiable minimum security measures. An association said that DHS was ignoring the threat posed by insiders, employees and contractors. According to this association, the rule should recognize the threat and the importance of training to mitigate those risks.

Response: The final rule specifies what must be addressed in a security plan, including: Physical security of the buildings used to produce driver's licenses and identification cards, storage areas for card stock and other materials used in card production; security of personally identifiable information including reasonable administrative, technical, and physical safeguards, a privacy policy, and limits on disclosure; document and physical security features for the face of the driver's license or ID card, including a description of the State's use of biometrics and the technical standards utilized (if any); access control, including employee identification and credentialing, employee background checks, and controlled access systems; periodic training requirements in fraudulent document recognition for covered employees; emergency/incident response plan; internal audit controls; and affirmation that the State possesses both the authority and the means to produce, revise, expunge and protect the confidentiality of REAL ID driver's licenses and identification cards issued in support of Federal, State or local criminal justice agencies or similar programs that require the safeguard of a person's identity in the performance of their official duties. Such requirements shall also apply to contractors involved in the manufacture or issuance of REAL ID-compliant driver's licenses and identification cards.

3. Background Checks for Covered Employees

Comment: Generally, States did not support the proposed background check provisions. A few States objected to these provisions as too broad and impractical. AAMVA stated that these requirements are a Federal intervention into State personnel rules and one commenter stated that these provisions are a particularly invasive intrusion on State autonomy to decide the qualifications and conditions of persons within its employ, which is a fundamental attribute of State sovereignty. States also objected to § 37.45(c), the provision instructing the States to notify persons of unfavorable checks and provide them appeal rights, and claimed that this provision may grant rights nonexistent in State law.

Numerous States said that background checks and the standards applied should be at the discretion of the State and not required. AAMVA and several

States suggested that existing employees should be grandfathered in to allow States to determine whether they want to do complete background checks on such employees.

Response: DHS disagrees that it cannot require background checks of covered employees. Such checks are a necessary step to protect against insider fraud, one of many vulnerabilities to a secure licensing system. DHS also disagrees with the concept of ''grandfathering'' existing personnel since there is no way to know in most States whether employees who have not been subject to a background check would satisfy this important requirement. Further, § 202(d)(8) expressly directs States to ''[s]ubject all persons authorized to manufacture or produce driver's licenses and identification cards to appropriate security clearance requirements.'' The background checks required under this final rule are authorized by and consistent with that statutory mandate. The statute does not provide for an exemption for personnel employed by a State DMV before the effective date of the Act or this final rule and thus DHS cannot include a grandfather clause in this rule.

Comment: Some States believed that DHS has exceeded the authority granted by the Act on background check provisions because of its expansive definition of ''covered employees.'' These States asserted that DHS is without authority to extend the background check requirements beyond employees who ''manufacture or produce'' cards. Similarly, one State asked that employees at branch offices who are not involved in the production and manufacture of driver's licenses or identification cards be exempt from the background check requirements. One State noted that the rule attempts to subject ''covered employees,'' ''prospective employees,'' and ''applicants'' to the criminal history record check, yet only defines the term ''covered employee.''

Response: DHS disagrees that its definition of a covered employee is too expansive. DHS, the agency charged with interpreting and enforcing the Act, interprets ''persons authorized to manufacture or produce'' REAL ID cards to include those individuals who collect and verify required source documents and information from applicants as such information is a necessary part of the production of a REAL ID card. It would be illogical to cover only those DMV employees and contractors who carry out only the physical act of cutting or printing a license while exempting those individuals who interact with the public and may be most able to introduce fraudulent information into the system and thus thwart the intent of the Act.

Comment: Commenters wrote that States currently only undertake background investigations at the time of hiring, and that since existing employees are not applicants, it is entirely reasonable for labor organizations and permanent State employees not covered by collective bargaining agreements to argue that non-probationary employees fall outside the scope of the background check provisions. Some commenters claimed that the requirement that all designated employees, including those who are already employed, undergo background investigations is contrary to many State labor contracts and personnel practices. Numerous employees were hired under terms and conditions not requiring a security clearance. Should these employees be disqualified under the new regulations, States may be obligated to provide them with alternative employment or severance.

Response: As noted above, DHS believes that it would be a significant security vulnerability to exempt current DMV employees from a background check.

Comment: One commenter claimed that the use of the phrases ''applicant'' and ''application'' in the rule governing interim disqualifying criminal offenses poses a practical problem, since the time periods are defined in terms of the date of the application. Existing employees would have been considered applicants on the date they filed the application for the position in which they are currently employed, which may be well outside the time period that applies to interim disqualifying offenses (five years from the date of application). Thus, commenters argued, the time period for interim disqualifications should start from the date of employment, not application. With regard to the proposed list of disqualifiers, AAMVA and some States wrote that States should determine their own disqualifying crimes and could outline those disqualifiers in the DHS certification package. Several States objected to the disqualification of people who have not been convicted on the grounds that such person should be considered innocent until found guilty.

Response: DHS agrees that the time period for interim disqualifications for existing employees should start at the date of employment, not application. DHS agrees that States may supplement the list of disqualifying offenses with their own lists, but those lists cannot replace the Federal list. Finally, DHS agrees that States may make different decisions about whether to move an individual from a covered to a non-covered position even though the individual has not been convicted, and can exercise his or her waiver authority for this purpose under § 37.45(b)(1)(v).

Comment: A few States argued that States should have the option to give employees provisional clearance pending background check results, and that States could outline the procedures for provisional clearance in their certification packages.

Response: As discussed above, DHS believes that it would be a significant security vulnerability to exempt current DMV employees from a background check. DHS has included language that substantially similar background checks (i.e., those that use a fingerprint-based CHRC check and have applied the same disqualifiers as this rule; that include an employment eligibility determination; and that include a reference check) conducted on current employees on or after May 11, 2006, need not be re-conducted.

Comment: One commenter wrote that, of the twenty-nine States that currently carry out some level of employee background checks, only two conduct credit checks. AAMVA and many States objected to the credit check as costly and in conflict with State personnel rules. One State noted that the Equal Employment Opportunity Commission (EEOC) has determined that unless justified by business necessity, it is unlawful to reject candidates based on poor credit ratings.

One State asserted that this requirement is a Federal encroachment into an area historically reserved to States. Some States questioned the link between an employee's financial history and the propensity to commit a crime and posited that implementing this provision as written would cause many union-related issues affecting existing and future employees. Other States pointed out that many law enforcement personnel are not subject to this level of checking. Another commenter objected to the financial check as an invasion of privacy that would not provide useful information, and if DHS requires a financial history check, it should provide standards on how the results of that check should be used by the States.

Response: DHS agrees that it would be difficult to make conclusive judgments about an employee or prospective employee's vulnerability to bribery based on a financial history check alone. Since the financial history check would not be determinative, DHS is eliminating the requirement for a

financial history check from the final rule.

Comment: AAMVA said that lawful status checks are unnecessary and excessive because States already conduct such checks as part of the hiring process. One State noted that the requirement differs from current Federal requirements for completion of the Form 1–9. Other States pointed out that SAVE only covers immigrants, not native born Americans. AAMVA and several States noted that lawful status checks are often addressed in union bargaining contracts, and are covered by State personnel laws.

Response: In response to these comments and further consideration of this matter DHS has revised the final rule. Employment eligibility verification using Form I–9 procedures is required for all employees (whether U.S. citizens or aliens) hired for employment at DMVs (or any other U.S. employer) on or after November 7, 1986. REAL ID defines lawful status in a way that is not synonymous with employment eligibility under the INA. Thus, the final rule now cross-references current Form I–9 requirements under section 274A of the INA rather than requiring employees to be checked through SAVE. As part of its background check process, the State must ensure that it has fully complied with Form I–9 requirements with respect to covered employees (including reverification in the case of expired employment authorization), but additional status checks are not required. Nothing in this rule in any way modifies any Form I–9 requirement; rather, the background check, if done at a later time than the initial hire, provides another opportunity for the State to check its previous compliance and correct any deficiencies. Form I–9 completion is, of course, required no later than three days subsequent to the first day of employment for all employees.

USCIS operates, in partnership with the Social Security Administration (SSA), an electronic employment eligibility verification program called E-Verify (formerly known as the Basic Pilot program). Participants in E-Verify can query SSA and DHS databases to verify the documentation provided by new employees when completing the Form I–9. States are strongly encouraged to enroll in this program, but, consistent with the voluntary nature of the E-Verify program as provided by the statutory provisions authorizing the program, it is not required by the final rule.

Comment: One commenter stated that background check processes are flawed, misidentifying people five percent of the time. According to this commenter, in half the States, forty percent of the arrest records have not been updated in five years to indicate disposition of the case. Another State wrote that it would be easier to run checks if they could interface with the FBI database. One State wrote that States should not have to repeat FBI checks if done within the past five years. One commenter asked that the FBI not charge States for accessing their systems.

Response: DHS believes that a fingerprint-based background check is the most efficient way to determine if an individual is subject to a disqualifying offense. FBI checks conducted on or after May 11, 2006 would not need to be conducted again.

Comment: One commenter said that workers subject to a background check deserve a clear and quick process to clear their names and win their jobs back with full restitution of any lost wages. Another commenter suggested that TSA should incorporate provisions from the HAZMAT rules which provide instructions for applicants on how to clear criminal records into the REAL ID rule.

Response: DHS believes that an individual denied employment based on the results of a background check should have the ability to challenge the accuracy of those records. States should make instructions available on how best to contest any inaccurate records or results.

N. State Certification Process; Compliance Determinations

1. Certification Process

Comment: Several commenters requested that DHS receive input and collaborate with States and other organizations on certification guidance and standards. One commenter requested that DHS provide certification packets outlining specific requirements as well as a clear definition of ''until all requirements are met.'' AAMVA and several States recommended that States work with DHS in the development of a streamlined self-certification process to meet the requirements of the Act. One commenter suggested that risk assessment and mitigation plans be included in States' self-certification, and that States participating in the Driver's License Agreement should be able to substitute their compliance review process for DHS audit requirements. One commenter recommended that DHS establish a committee composed of Federal and State officials and representatives of groups which face unique challenges with respect to the REAL ID Act to recommend proposed content for the guidance documents on certification. Some States asked DHS to clarify the requirement for States to provide DHS with any changes to the information requiring certification. Regarding guidance requests, a few States requested a template for the certification document and the security declaration as well as a quarterly reporting standardized format.

Response: DHS has streamlined the certification process, and includes a compliance checklist with this rule. The Material Compliance Checklist will document State progress toward meeting DHS security benchmarks and will serve as the basis for DHS approval of additional extensions until no later than May 10, 2011.

Comment: Several States argued that the certification requirements are too burdensome, citing staffing issues as well as the need for ample preparation time and flexibility to comply with regulations. Similarly, many States argued that the frequency of certification reporting is too burdensome and questioned the need for quarterly certification reporting. One State recommended a triennial review. Other States thought the requirement to track all exceptions and to notify DHS 30 days before program changes were over-reaching and not authorized by statute. One State recommended that the DHS establish a system of measuring performance instead of recertification.

Response: As documented above, DHS has simplified the certification process.

Comment: Some States suggested allowing States whose DMVs fall under a jurisdiction other than the Governor the ability for the relevant public official to certify compliance. AAMVA and one State argued that the rule should provide that certification be signed by the highest-ranking State official overseeing the DMV, including the DMV Administrator, and not require additional certification from the Attorney General.

Response: DHS agrees that requiring the Governor of each State to personally certify State compliance is too burdensome and has amended the requirement to allow either the Governor or the highest-ranking executive official with oversight responsibility over the operations of the DMV to certify State compliance.

2. Compliance Determination

Comment: One State argued that unless and until a State loses a judicial review, it should be considered in compliance. Another State recommended that DHS recognize States that have implemented a number of

requirements and plan to continue making substantial progress as compliant. A State asked DHS to allow for the Governor to indicate that the State will remain in compliance until it withdraws from the program. Some States argued that a phased approach was the only viable means to bring States into compliance. One State recommended that DHS convene a working group with AAMVA to develop a phasing plan for compliance.

Response: As documented above, DHS has adopted a compliance process that significantly lessens the burden of REAL ID implementation on the States.

Comment: Various State and non-State commenters addressed noncompliance issues. One State asked how licenses issued during a compliant period would be treated if a State later fell out of compliance. Another State requested that DHS provide written notification of preliminary non-compliance determination and notice of final determination of noncompliance which would not be effective for 30 business days following receipt. A State indicated it would not agree with non-compliance issues until the standards are clearly identified and agreed upon. One commenter opposed DHS's ability to withdraw a State's certification to issue REAL ID driver's licenses and identification cards on short notice, noting that decertification would negatively impact truck driver communities, government facilities, and the overall economy of the State.

Response: REAL ID driver's licenses and identification cards issued when a State was in compliance with REAL ID will remain acceptable for official purposes until they expire, even if the State subsequently becomes non-compliant. The REAL ID certification process will provide a standardized means of measuring and monitoring the DMVs' compliance with REAL ID requirements. DHS will not withdraw a State's compliance on short notice, as certification reporting dates will be established in advance.

Comment: A commenter requested that DHS provide written statements of notice prior to inspections, interviews, or any noncompliance determinations. Some States asked for flexibility and reasonable prior notice when scheduling site visits and REAL ID compliance audits, in order to have appropriately trained staff available to answer questions and to prevent audit overlaps. Commenters believed that States should have ample opportunity for review and appeal of decisions regarding self-certification.

Response: DHS agrees with these comments. Language has been added to § 37.59(a) to indicate that DHS will provide written notice of inspections, interviews and audit visits. States will be provided with a sufficient opportunity for review and appeal of decisions regarding their self-certification.

Comment: Commenters addressed various training issues. One recommended that DHS allow the current AAMVA fraudulent document recognition training program to be used to meet the REAL ID Act's requirements. This program has been used by States and ''is widely recognized as comprehensive, directly related to and easily comprehended by DMV staff.'' One commenter objected to the requirement for DHS approval of fraudulent document training. Another commenter emphasized the need for ongoing evaluator/authenticator training. Without specific requirements for the training, States lack notice as to whether or not the training will comply with the regulations and will be subject to the unfettered discretion of DHS.

Response: DHS agrees that AAMVA's training program on fraudulent document recognition will be acceptable to meet the requirement of the Act and the final rule. The majority of States currently utilize AAMVA's program.

Comment: One commenter requested a definition of ''expedited consideration'' of a request for an extension. Other States requested opportunity for input, justification, and consulting in the extension process and assistance with development of the quarterly and annual reports. One non-State commenter requested standards for the issue of redress, and another suggested that DHS develop standards and plans to audit States' security plans.

Response: The final rule spells out a simple and straightforward process for States to request an extension to the REAL ID implementation deadline. DHS will also allow States to receive an additional extension based on achievement of certain benchmarks established by DHS until no later than May 10, 2011. DHS will notify a State of its determination on a request for extension no later than 45 days of receipt of the request. DHS will work with States and territories throughout the implementation process to assist as required.

The input DHS receives from its stakeholders has been of tremendous value in crafting a final rule that the States may implement and that achieves a greater level of security and confidence in the State-issued driver's licenses and identification cards. DHS will continue engaging its valued stakeholders to shape the exceptions processes as well as other requirements of the rule.

O. Driver's License and Identification Cards That Do Not Meet the Standards of the REAL ID Act

Comment: One commenter did not agree with DHS that foreign nationals denied REAL ID licenses, even though they are lawfully present but do not yet have the documentation required to demonstrate such status, can simply obtain a non-REAL ID alternative. The commenter wrote that a driver's license increasingly has become a ticket to daily living, and a non-REAL ID license will unfairly and improperly tag the holder as ''illegal'' and result in discrimination. One commenter wrote that it is not a valid assumption that most States will issue some other kind of license for immigrants who cannot obtain a REAL ID license. Another commenter wrote that marking non-REAL ID cards would divide the country into two groups and that those with other cards would instantly be suspect and subject to delay, harassment, and discrimination.

One commenter noted that many people such as the elderly or disabled will not need a REAL ID and asked that the State be able to issue a non-compliant identification card to them. By excluding them from the REAL ID process, it will be easier for the State to process those who do need a REAL ID within the time allowed.

AAMVA stated that although DHS has argued that States do not have to comply with the Act, the Act and DHS still impose requirements on States for the issuance of noncompliant licenses. AAMVA wrote that this requirement forces States to be in compliance and that the rulemaking goes well beyond Congressional intent in prescriptively outlining State requirements for ''non-compliant'' REAL ID cards. One State and one individual commenter noted that requiring States to follow these standards imposes a cost on States that choose not to comply, a violation of the 10th Amendment. Another State said that the Federal government cannot require a redesign of documents if the State is not complying. The Federal government should acknowledge the sovereignty of States' rights and respect the traditional State function of licensing drivers.

Response: DHS does not agree that an individual carrying a non-compliant driver's license or identification card from a State issuing REAL ID-compliant driver's licenses or identification cards would be subject to discrimination. States will make their own business and policy decisions about whether to issue

noncompliant cards under 202(d)11 of the Act.

DHS has clarified in the rule that it interprets § 202(d)(11) of the REAL ID Act, which provides requirements for the issuance of driver's licenses and identification cards that will not be accepted by Federal agencies for official purposes, as applying only to States participating in the Act that choose to also make these types of documents available. This might apply, for example, to individuals with a religious objection to having their photos taken. DHS does not interpret this section to apply to States that choose not to participate in the Act.

P. Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004

Comment: AAMVA, some States, and several additional commenters support the development of REAL ID cards that are WHTI-compliant. AAMVA stated that this is an important direction to ensure the free flow of commerce and travel between the United States and Canada. Some States said that they already collected citizenship data and adding this to REAL ID cards will have little to no additional cost impact.

Several States argued against development of a WHTI-compliant/REAL ID-compliant card. One State said that citizenship is the purview of the Federal government and not that of States, and making a State DMV responsible for verifying citizenship places State employees in a Federal role. This State also noted that citizens with no desire to cross the border will derive no additional benefit from obtaining a REAL ID card that also denotes citizenship. A few States made similar arguments that very few of their residents would find it useful to have a WHTI-compliant REAL ID card. These States also argued that the expense to implement a WHTI-compliant solution would be cost prohibitive.

One commenter emphasized that REAL ID cards must not include citizenship information because of the potential of discrimination against those who choose not to carry a national identification card. Another commenter said that the creation of a dual-use driver's license should be a decision that is made by individuals, after they are fully informed of the benefits, risk, costs, and other details of the programs consistent with the Fair Information Principles.

A few commenters stated that they did not support States listing citizenship information on the REAL ID card or using a REAL ID card as an immigration/border document. These individuals believed that that WHTI-compliant REAL IDs would be significantly more useful to criminals and terrorists and therefore targeted for theft, counterfeiting, and fraud. One individual suggested that DHS could mitigate some concerns that the Department is trying to create a Federal ID by not requiring DMV to denote citizenship on REAL ID cards.

All of the organizations that responded to the question on where citizenship should be listed on the card stated that it should be on the machine-readable zone (MRZ) portion of the card. There were no supporters for listing the citizenship information on the face of the card. These organizations all claimed that placing citizenship information on the face of the card could result in discrimination against the bearer of the card; placing it on the MRZ portion of the card could prevent this from happening.

One commenter described in great detail the need to develop two encrypted MRZs on the card; one zone that can only be accessed and used by DMV and law enforcement officials, and another zone that can only be accessed and used by border and immigration officials. A few organizations commented that placing the WHTI information on a card may be challenging without increasing the size of the card itself. However, increasing the size of the card would be extremely costly.

Response: DHS welcomes the various helpful comments submitted in response to DHS's questions in the NPRM relating to WHTI. In June 2007, DHS published a NPRM to implement the land and sea phases of WHTI. While DHS acknowledges the desire of some, but not all, States and other commenters to use a REAL ID-compliant driver's license or identification card as a WHTI-compliant border crossing document, DHS did not propose that a REAL ID-compliant driver's license or identification card serve as a WHTI-compliant document in that NPRM and does not propose such in this rulemaking. While the proposed REAL ID requirements include proof of legal status in the U.S., the EDL will require that the cardholder be a U.S. citizen. In addition, EDLs will include technologies that facilitate electronic verification and legitimate movement of travelers through land and sea ports-of-entry.

Comment: A few commenters provided suggestions on the types of business processes and procedures that a State DMV could adopt to create a REAL ID that is also WHTI-compliant. One group suggested that citizens who desire to have a REAL ID that allows for WHTI border entry should be vetted by the State Department in the same manner as a person applying for a passport. The State Department would verify that the individual is eligible to receive WHTI identification and inform the appropriate State DMV that the individual has been approved to obtain a WHTI-compliant REAL ID. The State DMV should create the license/ID card as it normally would and then send it to the State Department to add the WHTI MRZ. There should be two machine-readable zones; one zone would only be able to be used and accessed by law enforcement and DMVs, and another MRZ that would only be able to be accessed and used by immigration/border officials.

One organization commented that State DMVs will need to be able to utilize the State Department's citizenship adjudication process or create a similar process for adjudicating citizenship.

One State opposed storing citizenship data on the MRZ, preferring to store this information centrally and access it via electronic means.

Response: DHS welcomes the comments submitted concerning potential business practices a DMV could follow to issue both a REAL ID and WHTI-compliant driver's license or identification card, including issues surrounding the adjudication of citizenship for WHTI purposes. As noted above, DHS published a NPRM to implement the land and sea phases of WHTI. At this time, DHS has decided not to incorporate requirements necessary for a WHTI-compliant document into the REAL ID rulemaking.

Comment: Many commenters said that RFID technology, the proposed technology for WHTI documents, should not be used on REAL IDs. Because RFID can be read from up to thirty feet away there are significant privacy and security risks. A few commenters noted that the DHS Data Privacy and Integrity Advisory Committee and the Government Accountability Office both advised against using RFID technology. One organization felt strongly that the use of RFID technology without the use of Basic Access Control and other safeguards would contravene the basic security features that the Department of State has included in new U.S. passports.

Another group believed that States can leverage the same infrastructure that they will need to purchase for REAL ID to incorporate MRZ, proximity chips, and vicinity chip technology onto a driver's license. The only difference

would be the cardstock and the quality assurance processes to ensure that electronics within the card are functioning properly. Another organization suggested that its product can turn the wireless function on or off as needed.

One State suggested that DHS not identify a specific technology to be used, but leave it up to the States to decide.

Response: The use of RFID is essential to the WHTI program in order to ensure facilitation at crowded U.S. land and sea crossing points. Similar concerns are not implicated by REAL ID, which is one of the factors that led DHS to select the 2D bar code as the common machine readable technology on driver's licenses and identification cards. DHS encourages States to explore alternative technologies on their driver's licenses and identification cards in order to promote security and technology advances as well as e-government initiatives a State may wish to explore.

Comment: There were several other comments related to the issue of creating WHTI-compliant REAL ID cards. One commenter requested clarification on why REAL IDs themselves would not be sufficient documentation to re-enter the United States. The commenter noted that REAL ID issuance standards require proof of lawful residence status within the United States, and the overall higher standards will make the cards more resistant to tampering and counterfeiting. Therefore, the commenters argued, it may be presumed that a holder of a REAL ID license has the right to re-enter the United States. Another commenter requested clarification on whether ''enhanced'' driver's license (EDLs) and ID cards that are issued through pilot programs will also have to be REAL ID-compliant. The commenter also requested clarification on how DHS will respond to States, like Washington State, that have passed legislation refusing to comply with the REAL ID Act unless the Federal government fully funds the State's implementation of the Act.

One commenter requested that DHS consult with tribal governments on how to best implement the REAL ID Act and that DHS consult with tribal leaders on the development of an Indigenous Identification Card for international border crossing.

One individual urged DHS to allow Canadians who are residents of the United States to be allowed to obtain REAL ID/WHTI-compliant driver's licenses or ID cards, as these individuals make up a significant portion of individuals who cross the border frequently.

Response: DHS acknowledges the desire of some, but not all, States and other commenters to use a REAL ID-compliant driver's license or identification card as a WHTI-compliant border crossing document. In the WHTI NPRM, DHS included a specific discussion of its ongoing efforts with Washington State regarding the issuance and use of an EDL as a WHTI-compliant document. EDLs can only be issued to U.S. citizens since the EDL would serve as the functional equivalent of a passport or passport card at land and sea border crossings. In addition, EDLs must also incorporate the technology specified by DHS to facilitate the legitimate movement of travelers through land and sea ports of entry. With respect to other holders of REAL ID-compliant driver's licenses or identification cards, any assumption that lawful status as defined for REAL ID purposes equates to a right to reenter the United States is incorrect. For example, applicants for adjustment of status typically must obtain advance parole in order to depart the United States and lawfully return. DHS has decided not to incorporate requirements necessary for a WHTI-compliant document into the REAL ID rulemaking at this time.

Q. Responses to Specific Solicitation of Comments

Question 1: Whether the list of documents acceptable for establishing identity should be expanded. Commenters who believe the list should be expanded should include reasons for the expansion and how DMVs will be able to verify electronically with issuing agencies the authenticity and validity of these documents.

Comment: Several commenters did not think the list of documents acceptable for establishing identity needed to be expanded, at least for U.S. citizens, and they were concerned that expanding the list would place a burden on State DMVs. One State did not know of any additional documents that would be electronically verifiable. Another State recommended that the list should not be included in the rule, so that future changes can be easily made. One commenter favored the use of the ''acceptable verifiable resource list'' of identity documents approved by AAMVA. Another State suggested that the rule should only specify criteria and procedures rather than a list of specific documents for establishing identity.

Response: As noted above, DHS has decided not to alter the list of acceptable documents proposed and discussed in the NPRM.

Comment: One commenter thought that § 37.11 should require non-citizen applicants to provide their alien registration documents so that State officials can compare it to the name on other documents. Various commenters pointed out that foreign applicants would have documents that are not on the list but may have been issued by DHS or the courts to prove immigration status. Some commenters supported other immigration forms, such as Form I–94 (which may indicate lawful status in the United States) and I–797 (which may be evidence of a pending application). Refugees and asylees are more likely to have these documents before they receive a Form I–766 Employment Authorization Document (EAD). Canadians present in the United States might have these forms rather than a visa. Two States suggested that any document that can be electronically verified through SAVE should be acceptable. Others argued for refugee status paperwork, expired foreign passports if USCIS documentation is current, as well as passports with expired visas and Immigration Court documents. One group recommended that DHS expand the list of acceptable documentation to include family members in the United States on derivative visas. Another group suggested that USCIS consider issuing a temporary refugee photo ID card that could be used to apply for a REAL ID.

Response: State DMVs will use the SAVE system to verify whether an applicant for a driver's license or identification card is lawfully present in the United States. Part of the information required in order to query SAVE is the name of the individual, which can be confirmed through one of the source documents for proving identity. Applicants are free to use any other documentation available, including an I–94 or an I–797, in order to demonstrate lawful status and assist the State in making a SAVE check. DHS also agrees with the commenters who suggested that any document that can be electronically verified through SAVE should be acceptable, since the purpose of providing that document is to prove lawful status, not identity. Neither the I–94 nor the I–797, for example, is sufficient to prove identity. DHS believes that refugees and asylees are issued EADs within a reasonable amount of time such that they are able to obtain REAL ID driver's licenses and identification cards, and so there is no reason to include other refugee or asylee paperwork or documentation to the list of documents used to establish identity.

Applicants who need an immediate driver's license can obtain a non-REAL ID document from States issuing such cards.

Canadians, however, will need to use their Canadian passport or obtain a U.S.-issued document in order to establish identity for a REAL ID license, as neither DHS nor the States can verify in a timely way that the document has been issued by the issuing agency (a foreign government in this case) as the statute requires. Canadians, however, can typically drive using their Canadian driver's license in the United States and can also obtain a non-REAL ID driver's license from States issuing such cards.

Comment: Some commenters had specific thoughts about the proposed provisions on birth certificates. A State agency suggested that a delayed birth certificate should be specifically named as an acceptable document. Other commenters argued for acceptance of hospital records or baptismal certificates within a year of birth and adoption papers. Another State noted that many births in rural areas are not recorded, and suggested that States should be able to use other documents. Many commenters wrote that the proposed requirement for a certified copy would place a hardship on poor persons and the homeless.

Response: If State law permits the use of a delayed birth certificate, that document can be used by a State. Hospital and baptismal records are not acceptable documents to establish identity, though, in appropriate circumstances, can be used in a State's exceptions process to establish date of birth or lawful status in the United States.

Comment: Two commenters recommended that current State-issued non-compliant driver's licenses and identification cards and bank-issued credit cards be included on the list of documents acceptable to prove identity because technology exists to verify and authenticate these documents. Commenters were divided on the acceptance of Native American Tribal Documents, with a few commenters, some Tribes, AAMVA, and two States supporting acceptance of the documents (particularly for birth records), and a few States opposing acceptance of these documents.

Response: DHS does not believe that non-compliant driver's licenses or credit cards are acceptable documents to establish identity. No identity verification has taken place with respect to these documents. Tribal documents are addressed elsewhere in the responses to comments.

Question 2: Whether the data elements currently proposed for inclusion in the machine readable zone of the driver's license should be reduced or expanded; whether the data in the machine-readable portion of the card should be encrypted for privacy reasons to protect the data from being harvested by third parties; and whether encryption would have any effect on law enforcement's ability to quickly read the data and identify the individual interdicted. What would it cost to build and manage the necessary information technology infrastructure for State and Federal law enforcement agencies to be able to access the information on the machine readable zone if the data were encrypted?

See full discussion of comments and responses to this question in section I.

Question 3: Whether individuals born before 1935 who have established histories with a State should be wholly exempt from the birth certificate verification requirements of this regulation, or whether, as proposed, such cases should be handled under each State's exceptions process.

Comment: Numerous commenters favored the premise that individuals born before 1935 with established histories should be exempt from the birth certificate verification requirements. Some States added that States should be allowed to establish alternative documents acceptable for ID verification in this circumstance. AAMVA and some States acknowledged that many in this age group may not be able to obtain a birth certificate or related documents. AAMVA also said that citizens born before 1951 with ten or more years of history with the State DMV and who have passed State-approved verifications should be exempt. Several States said that electronic verification would likely be incomplete and non-electronic verification would be too burdensome for persons born before 1935. Another commenter said jurisdictions should be allowed to segregate the population by risk assessment to enable a managed approach to enrollment in REAL ID. One commenter added that it explicitly proposes using the term ''American citizens born before 1935'' rather than the term ''individuals.'' A couple of States suggested granting an exemption based on the age of the applicant instead of an exemption based on a fixed date, with one suggesting 62 years of age, based on eligibility to receive social security benefits, for those persons with established histories with the State.

Response: DHS has determined that it will not allow a broad birth certificate exemption for those persons born before 1935, and allows States to accommodate such persons as necessary in their exceptions process.

Comment: States requested clarification regarding ''established histories with a State'' i.e., whether this means individuals who already have a license or identification card in the State where they are seeking a product. One commenter suggested a history with the State for a minimum period of time, such as twenty to thirty years. This exemption should be part of each State's security plan so risks can be further mitigated through the overall REAL ID plan at the jurisdictional level. A couple of States also said that individuals without established histories should be handled through the State exceptions process, enabling qualified drivers to obtain a compliant license or identification card. A number of organizations said that these cases should be handled under the State exceptions process. One commenter wrote that DHS should establish a standard to which all States should conform in issuance of birth certificates. Another wrote that the process should be thoroughly documented, reviewed, and updated on an on-going basis. One commenter wrote that the process should substitute some form of identity verification that precludes imposter fraud. Another commenter wrote that this elaborate process is itself another argument in favor of restricting the Federal role in licensing altogether.

Response: DHS has taken a different approach to reducing the number of people that a State DMV must process. DHS consulted with intelligence analysts and experts about how best to target preventive efforts against an individual attempting to fraudulently obtain an identification document to gain access to a Federal facility, nuclear facility, or commercial aircraft.

DHS has determined that, based on information it has reviewed, there is a higher risk that individuals under age 50 will obtain fraudulent identification. As a result, the rule requires States to focus enrollment first on individuals born on or after May 11, 1965 when issuing REAL ID cards. DHS has further determined that there is an acceptable level of risk in deferring the REAL ID enrollment requirements until December 1, 2017 for those individuals who are older than age 50 as of December 1, 2014.

Comment: Two States said that customers born before 1935 should make every attempt to comply with REAL ID rather than being granted a blanket exemption. If compliance is not possible, exceptions procedures (along

with other documents to reasonably prove identity) should be the next step.

Response: DHS agrees with these comments and has decided not to adopt an exemption for individuals born before 1935, as discussed above.

Comment: AAMVA and several States said that individuals born before 1935 should not only be exempted from the birth certificate requirements, but also wholly exempt from the entire enrollment process since these individuals do not pose any potential threat. However, one State said it lacks the expertise to opine on the risk of terrorism this exemption would pose.

Response: As noted above, DHS is not proposing to exempt any individuals from the REAL ID enrollment process.

Comment: Other commenters suggested the following exemptions from reenrollment: individuals for whom proof of identity, residency, lawful status and SSN can be proven electronically, and citizens who are elderly, disabled, in nursing homes or mental institutions and who will not be getting on an airplane or entering a Federal facility.

Response: As noted above, DHS is not proposing to exempt any individuals from the REAL ID enrollment process. DHS urges States to make appropriate accommodations for handling the elderly, disabled, and those in nursing homes or mental institutions. Section 202(d)(11) of the Act gives States the opportunity to issue non-compliant licenses that are not accepted for official purposes and may not necessarily require an in-person enrollment, depending on the State's issuance process.

Question 4: If a State chooses to produce driver's licenses and identification cards that are WHTI-compliant, whether citizenship could be denoted either on the face or machine-readable portion of the driver's license or identification card, and more generally on the procedures and business processes a State DMV could adopt in order to issue a REAL ID driver's license or identification card that also included citizenship information for WHTI compliance. DHS also invites comments on how States would or could incorporate a separate WHTI-compliant technology, such as an RFID-enabled vicinity chip technology, in addition to the REAL ID PDF417 barcode requirement.

See full discussion of comments and responses to this question in section P.

Question 5: How DHS can tailor the address of principal residence requirement to provide for the security of classes of individuals such as Federal judges and law enforcement officers.

See full discussion of comments and responses to this question in section I.

Question 6: What benchmarks are appropriate for measuring progress toward implementing the requirements of this rule and what schedule and resource constraints will impact meeting these benchmarks.

Comment: AAMVA listed ten criteria for measuring a State's progress towards implementation of the REAL ID requirements—procurement practices, process changes, contractual arrangements, funding, legislative authority, personnel, facilities, computer systems, new verification systems, and existing verification systems. Some States suggested variations on these themes, proposing that a set of standardized benchmarks was not realistic. Rather, each State should be able to determine appropriate benchmarks depending on what they had to do to implement REAL ID. Progress could be measured against implementation plans States submitted to DHS and should be based on a phased approach. One State suggested that DHS create a matrix that could be used to show progress for the major components of REAL ID. Another State argued that it is difficult to establish benchmarks before all regulatory requirements have been finalized. One State recommended a ''strategic'' rather than ''prescriptive'' implementation approach.

One privacy group stated that the final rule must include robust security standards for national querying systems. A vendor association provided detailed recommendations on access control and authentication practices. One State made very detailed recommendations on privacy standards including a pre-defined audit requirement. A vendor association recommended strong sanctions for violations of procedures to deter the insider threat and notification of anyone whose information is breached.

Response: The final rule specifies the elements necessary to be REAL ID-compliant, and DHS has proposed a checklist process for States to demonstrate completion of certain compliance benchmarks, and full compliance with the Act and these regulations.

Question 7: Adoption of a performance standard for the physical security of DMV facility, including whether DHS should adopt the ANSI/NASPO ''Security Assurance Standards for the Document and Product Security Industries,'' ANSI/NASPO–SA–v3.OP–2005, Level II as the preferred standard.

See comments and responses to this question in section M.

Question 8: How DHS can better integrate American Samoa and the Commonwealth of the Northern Marianas into the REAL ID framework.

Comment: Several States indicated that individuals from American Samoa and the Commonwealth of the Northern Marianas should be issued a REAL ID if they provided acceptable documents like birth certificates, valid passports, unexpired driver's license, or U.S. issued immigration documents.

In addition, a few States supported an exception process for these territories. One State said that without Federal funds, it would be difficult if not impossible for both territories to comply due to complexity, cost and timing issues. Some States questioned whether American Samoa would be able to issue driver's licenses and identification cards under the REAL ID Act and regulations. Other States claimed that without evidence of U.S. citizenship, Northern Marianas residents would not be able to obtain a license or card. One State recommended that DHS accept the Northern Mariana Card (I–873) to establish identity and residency. Customers without this card could be assisted under current State exceptions processes. Another State also suggested acceptance of the Re-entry Permit/Refugee Travel Document (I–327, I–571).

AAMVA and some States requested clarification as to the specific issue caused by these groups of applicants.

Response: DHS believes that American Samoa and the Commonwealth of the Northern Marianas will be capable of complying with the REAL ID requirements in the same time frame as other States and Territories.

Question 9: Whether the physical security standards proposed in this rule are the most appropriate approach for deterring the production of counterfeit or fraudulent documents, and what contractual issues, if any, the States will face in satisfying the document security requirements proposed in this rule.

Comment: See comments and responses to this question in section I. Also, AAMVA commented that States will face significant contractual conflicts if the document security standards in this NPRM remain in the final rule. States are using the AAMVA Driver Licensing and Identification Card Design Specification as the model to prepare bid packages for new contracts or renewals. Contract periods for card vendors vary by State and are driven by procurement rules. One State, for example, has a contract in place for the next seven years. Most States have at least five year contracts. AAMVA

recommended that DHS use the AAMVA Driver Licensing and Identification Card Design Specification as the minimum card security standard, allowing States to build on its provisions. States should not be expected to break or amend existing contracts and should not be expected to implement any changes to card security until their existing contracts expire.

Response: See comments and responses to this question in Section I.

Question 10: The Federalism aspects of the rule, particularly those arising from the background check requirements proposed herein.

Comment: Several commenters said that REAL ID was beyond Congress's enumerated powers because the States have a valid immunity claim. Another commenter wrote that REAL ID usurped States' traditional authority. One commenter wrote that it is a violation of the tribal-Federal relationship to require a tribal government official to go to a State government official in order to obtain proof of identification in order to travel and conduct official tribal-Federal government business. One commenter said that State DMVs cannot revoke licenses or identification cards issued by another State. One State found no Federalism issues as States are able to control the design, and, potentially, the security features of its cards. However, other States voiced a number of Federalism concerns.

One State presented a list of impacts flowing from the REAL ID program: Procurement practices, process changes, existing contractual arrangements that cannot be altered without significant penalty, fund appropriations, laws, facilities, computer systems, requirement of new verification systems. Similarly, some States argued that the REAL ID regulation could not survive a challenge brought under the 10th Amendment of the Constitution. It continued, ''Given an affidavit issued by the Governor of the Commonwealth, DHS would have universal, unfettered access to employees and systems that are dedicated to a traditionally State function.'' Another State wrote that DHS should not intrude into the traditional State function of licensing drivers and issuing identification cards by attempting to prescribe the processes for creating, issuing, and administering REAL ID cards, and that DHS should specify the security, performance, and quality characteristics that REAL ID participating jurisdictions must achieve. Some commenters believed that the REAL ID Act violates both the spirit and the letter of Federalism law. The commenters wrote that the REAL ID Act aims to conscript the States into creating a national ID system, and that it is ''this kind of scheme'' that the Framers expected Federalism to guard against. Because of this, many States have passed anti-REAL-ID resolutions and legislation.

Response: The REAL ID Act provides the Secretary of Homeland Security with authority to issue regulations. DHS understands that there is a balance between Executive discretion in interpreting the REAL ID Act through regulation, while also respecting the States' autonomy to govern an inherently State function—the driver's license and identification card issuance process. DHS has attempted to preserve State autonomy wherever possible, while remaining consistent with the Act, and believes these regulations represent a logical interpretation of the Act and Congressional intent.

Comment: One commenter argued that States should have discretion to determine whether to conduct background checks on State employees. One State DMV said that because it conducts a fingerprint-based background check on its employee-applicants, implementing the REAL ID requirement would have ''minimal'' impact. In contrast, one State said that in requiring a background check for State employees, DHS is ''overreaching.'' Because the requirement includes several checks, only one of which a DMV could use to disqualify an employee from performing certain REAL-ID-related activities, a State argued that the rule impacts both the individuals a State may hire and retain in certain positions. It also requires a collection of information for no stated reason. Another State DMV wrote that DHS goes beyond the statutory language in requiring a background check, and suggested that DHS strike the provision.

With regard to the financial history check, one State noted that this aspect of the draft regulation would intrude into the relationship that State governments have with their employees. It argued that DHS could avoid Federalism issues by having its regulations ''express the security characteristics that a State would need to achieve rather than prescribe how State processes should operate.'' The Federal government, it said, should not regulate hiring practices for State employees. One State wrote that it has discontinued credit checks because it was not an adequate indicator of a person's behavior or ethics.

Response: As noted above, DHS believes it has the authority to require background checks. Based on the comments received, DHS has decided to eliminate the financial history check of DMV covered employees and prospective employees.

Comment: Although one State agreed that DHS has authority to review State compliance within the scope and criteria of the auditing granted by the statute, this State asserted that DHS exceeded the scope of its authority in promulgating § 37.59(a), which lacks a check on seemingly unlimited Federal authority to inspect State processes.

Response: DHS does not believe the language of § 37.59(a) provides DHS with unfettered authority to oversee the actions of State government. Indeed, the section provides the opportunity for States to challenge a DHS determination of non-compliance, rather than a Federal authority with no right of appeal. DHS has also relaxed the reporting requirements in this final rule in response to comments that the reporting requirements in the NPRM were too burdensome.

Comment: One State asserted that it is beyond DHS's authority to compel non-participating States to maintain a motor vehicle database with the minimum required REAL ID information and to share access to any such database with other States.

Response: DHS is not compelling non-participating States to meet any of the requirements of these rules.

Comment: A State objected to the requirement that a REAL ID cardholder's address change requires the person to report and document the change in person at a DMV office. The State says it is apprehensive that the proposed rules erode the important principles of Federalism, especially regarding managing elections. When a driver applies for voter registration, the State automatically checks to see whether the address given on that card is the same as the address on a State-issued driver's license or identification card. If there is a mismatch, State law requires automatically changing the license or identification card address to match that on the voter application form. This State requested that DHS give serious consideration to allowing this automatic updating practice to continue. Another commenter said DHS should ensure that the final regulations continue to provide States maximum flexibility to determine which employees are subject to the requirements of this section.

Response: As noted elsewhere, the final rules do not require an individual to have an in-person transaction with the DMV to change their address.

Comment: One commenter said that because direct regulation of the States would be unconstitutional, the REAL ID

Act inappropriately conditions Federal acceptance of State-issued identification cards and driver's licenses on their meeting certain Federal standards. The commenter was also concerned that DHS was using State machinery to implement a Federal program. However, the commenter asserted that it is within Federal power for DHS to condition acceptance of identification cards and driver's licenses on priorities closely related to national security, including meeting standards for privacy and data security.

Response: Congress passed the REAL ID Act to implement a recommendation of the 9/11 Commission Report to increase the security, credibility and confidence in identification documents. Congress, in drafting the law, and understanding the Constitutional concern of directly regulating the States, made the law binding on Federal agencies in specifying that only REAL ID-compliant driver's licenses would be accepted by Federal agencies for official purposes after the law is implemented. DHS agrees with the commenter that the Federal government has the authority to condition acceptance of driver's licenses and identification cards on the meeting of certain standards and requirements as defined in the REAL ID Act and the implementing regulations.

Comment: One commenter concluded that Congress and DHS could have supported meaningful Federalism by supporting States' pre-REAL ID initiatives to produce an interstate compact to achieve interoperability of State databases.

Response: This comment is outside the scope of the rulemaking.

Question 11: How the Federal government can better assist States in verifying information against Federal databases.

Comment: Several States and other commenters had a number of suggestions including the following:

—Develop and test or enhance Federal databases to meet States' needs.
—Establish standards for system performance and connectivity.
—Ensure that matches can be made with as little manual intervention as possible.
—Establish standard naming conventions.
—Put security standards in place.
—Fund system development and assist States financially in performing verifications.

Response: DHS is collaborating with its Federal partners, AAMVA and the States to design and implement verification systems to support the requirements of the REAL ID Act and regulations. DHS is working on improving the reliability, usability and accuracy of existing systems like SSOLV and SAVE to meet States' needs to minimize the manual intervention necessary.

In addition, DHS will work with DOT, AAMVA and the States to reinforce the security and privacy features of this communications and systems architecture to include practices consistent with fair information and Federal Information Security Management Act principles. In partnership with DOT, AAMVA, and the States, DHS will issue best practices to guide future systems design, development and operation. DHS is also working with Federal, State, and nongovernmental organizations to identify and improve name formats and matching algorithms used by identify verification.

Question 12: In addition to security benefits, what other ancillary benefits could REAL ID reasonably be expected to produce? For example, could REAL ID be expected to reduce instances of underage drinking through use of false/fraudulent identification. If so, please provide details about the expected benefit and how it would be achieved through REAL ID.

Comment: Several commenters wrote that REAL ID will decrease identity theft. Several other commenters thought that a decrease in theft might not be attributed to REAL ID but be due to the fact that many States are implementing more stringent rules for obtaining a driver's license.

A few commenters claimed that REAL ID will have little to no impact on identity theft. One commenter noted that most instances of identify theft are a result of a stolen social security numbers or credit cards, and that REAL ID does not address these types of thefts. Another organization stated that ''loopholes'' in the source documentation requirements for those without a permanent addresses or birth certificates take away any perceived REAL ID benefit.

Most of the commenters thought that REAL ID would increase identity theft. Commenters wrote that the NPRM did not propose sufficient protection and security controls to ensure that the information being collected and stored will be immune to theft or misuse. Several commenters said that the databases storing digital images of social security numbers, bank statements, and birth certificates will be an identity-thief's dream target. These images, once in the hands of criminals, will be easy to counterfeit. If systems are linked, a single breach in security will potentially compromise 240 million individuals. Several commenters also highlighted that threat to this information may come from within DMVs. One organization quoted that over 100 million records of U.S. residents have been exposed due to security breaches.

Response: DHS provided a detailed analysis on the ancillary benefits of the proposed rule on REAL ID. We noted, as the comments suggested, that the proposed rule may have only a small impact on reducing identity theft. REAL ID will only have the ability to impact those types of identity theft that require a drivers license for successful implementation and only to the extent that the rulemaking leads to incidental and required use of REAL ID documents in everyday transactions, which is an impact that also depends critically on decisions made by State and local governments and the private sector. With the current costs of identity theft being high, we believe that even if the ancillary benefits associated with identity theft are low, when these benefits are combined with other benefits of this rulemaking, that this rule is cost-beneficial.

Many commenters believe that REAL ID would increase identity theft. We find, at the current time, that it would be difficult to draw any conclusions such as this since the effort or cost to individuals to obtain and use a passable fraudulent identification card is expected to be much higher than it is at present. Only those people who believe that they will reap substantial benefits would be willing to incur the cost of creating and using a fraudulent identification card.

With regard to the general comment that REAL ID is expected to reduce instances of underage drinking through the use of false/fraudulent identification, DHS believes that REAL ID may reduce on the margin the rate at which underage drinking occurs. The rate at which it does so partly depends on State and local authority and/or private employer decisions as to what form of identification is acceptable for particular purposes, and the effectiveness with which identification checks are implemented. DHS is not willing to quantify, at this time, the expected benefits that would be achieved from a reduction in underage drinking.

Comment: Regarding the ancillary benefits of REAL ID, some States supported DHS's suggestion that REAL ID could reduce underage drinking and purchase of cigarettes by making it easier for vendors to identify fake identification cards. Other commenters wrote that REAL ID could also promote

highway safety by allowing law enforcement officers to process vehicular accidents and traffic citations faster and more accurately, and potentially aid other law enforcement efforts.

Several commenters noted that one of the possible ancillary effects of a REAL ID is that commercial entities will be able to market to individuals without the individual's permission. The MRZ and the 2–D barcode technology discussed in the NPRM makes it easier for third parties to obtain sensitive information about the holder of the cards. Several commenters gave examples of how commercial entities will make REAL ID the default document for everyday transactions and thus will be able to obtain, store, and track individual's age, address, and purchases.

Three organizations noted that State transactions, such as the issuance of professional/occupational licenses (for example, licensing for doctors, lawyers, nurses, real estate brokers) and hunting and fishing licenses, could be done with a higher level of assurance that the license is being given to the right person. Two other organizations also said that health-related and financial companies would also receive security benefits associated with more trust in the validity of the identification cards. One commenter stated that all employers would benefit because they would be better able to determine employment eligibility.

Response: DHS believes that the potential ancillary benefits of this rulemaking would be in many areas. Should acceptance of REAL ID cards become widespread, such ancillary benefits may include reduction in fraudulent access to public subsidies and benefits programs, illegal immigration, unlawful employment, unlawful access to firearms, voter fraud, underage drinking, and underage smoking. DHS believes that REAL ID may reduce on the margin, the rate at which these fraudulent activities take place. The degree to which they do so will partly depend on State and local authority and/or private employer decisions as to what form of identification is acceptable for particular purposes, and the effectiveness with which identification checks are implemented. DHS cannot, at this time, measure these benefits quantitatively.

With regards to organizations, businesses, etc., DHS is not preventing the use of REAL ID in State transactions and the individual who is having the document presented to him can place any level of trust he/she wants in the REAL ID document.

Question 13: The potential environmental impacts of the physical security standards and other requirements proposed under this rule.

Comment: A State recommended that DHS seek out U.S. EPA or a similar group to evaluate the potential environmental impacts. One State DMV wrote that the environmental impacts of the rule would be minimal. States may have to perform the required environmental impact analysis if changes to issuance facilities are necessary. AAMVA suggested that environmental impacts associated with retrofitting the facilities to meet physical security standards will result in some environmental risks such as asbestos removal.

One State asserted that the increased visits by individuals to renew their licenses and corresponding activities associated with creating a license (for example, increased usage of electricity, scanners, copiers, printers, and paper) will impact air, ground, and water quality, and result in unnecessary waste disposal and consumption of natural resources, electricity, and other fuels and add to traffic congestion. This State recommended that DHS revise the rule to employ a phased approach which could allow States to certify and renew on schedules that will not adversely impact the normally occurring renewal cycle.

One commenter suggested that the durability provided by longer life driver's licenses and identification cards could result in less material going into the waste stream resulting in an environmental benefit.

Response: DHS carefully evaluated those comments along with other potential environmental impacts of this rule. The comments show that, if the States choose to create a REAL ID process, any potential environmental impacts which might be significant, can be mitigated. DHS concludes that the rule's potential impacts are minimal and notes that the rule does not force an immediate action but only lays the foundation for subsequent action. If States seek follow-on DHS grant funding, approval, or other activity for implementation of the rule, then the potential environmental impacts associated with the follow on activity must be reviewed.

Question 14: Whether other Federal activities should be included in the scope of ''official purpose.''

See comment and response to this question in section B.

Question 15: How the REAL ID Act can be leveraged to promote the concept of ''one driver, one record, one record of jurisdiction'' and prevent the issuance of multiple driver's licenses.

Comment: Most commenters supported the ''one driver, one record concept,'' and most States said Federal funding for an ''all drivers'' system would promote the concept. A couple of States specifically endorsed DRIVerS (Driver Record Information Verification System). Many States joined AAMVA in endorsing a State's initiative to enter into a Driver License Agreement to develop ''a nationwide pointer system with the driver record and driver history transferred to a 'change State record' when the driver moves to a new State.'' AAMVA and many States also endorsed basing any such pointer system on the Commercial Driver License Information System (CDLIS).

One State said that any ''all drivers'' verification system must include ''reciprocity rules'' so that an individual who is required to move frequently across States need not undergo a complete REAL ID check every time. However, one commenter said a CDLIS-type system is a concern because it is a ''one person one license (or ID card) one record system'' with no regulatory or statutory limitations on who can access information and for what purpose. To protect privacy and ensure driver safety across States, the commenter said the existing Problem Driver Pointer System/National Driver Register is better.

A few commenters also joined AAMVA in endorsing the AAMVA/National Highway Traffic Safety Administration joint initiative to develop a digital image exchange project to identify multiple State license holders. Some States echoed a comment from AAMVA that because a driver's license applicant must surrender his or her current license from another State as a condition of receiving a new license, the States already follow a policy of one driver, one license. Another State said that States should require a driver's license applicant to self-declare the existence of a prior compliant or non-compliant license or card and require confiscation and notification to cancel before the new State issues a document. Several commenters endorsed using the Driver License Agreement compact as an extant system for promoting ''one driver, one record.''

Other process recommendations included the suggestion that a national business process standard be developed to let jurisdictions know of the theft or loss of a REAL ID card and forming an agreement similar to the DLA that both REAL ID and non-REAL ID States can use to ensure cross-checking before a jurisdiction issues any driver's license.

Requiring ''cleaning'' of existing databases and comparing legacy databases used to issue a REAL–ID compliant card was also recommended.

One commenter said that having only one license for multiple purposes would better promote the concept than having non-REAL ID and REAL ID driver's licenses. It also said that the United States must accept standards nationwide to be used with confidence of driver's license exchange to move across boundaries and should encourage/mandate reciprocity of like licenses.

Some commenters noted problems with implementing the ''one driver, one record'' concept, stating that, without participation by all States, the system is fundamentally flawed in that a person could hold multiple non-REAL ID driver licenses and a REAL ID-compliant card. One State said that DHS lacked authority to compel a non-REAL ID State to participate in systems that promote the concept. It suggested that the ''one driver, one record concept'' should only apply to the REAL ID-compliant system.

Other States said the rules should allow a person to hold both a REAL ID-compliant card and a non-REAL ID card in any combination ''with the limitation that a driver has no more than one license and one card at a time.'' One State suggested that a person not hold more than two REAL ID-compliant cards at a time: a driver's license and an identification card. This commenter said a person might wish to carry a REAL ID-compliant card and keep another at home. One State said that it issues identification cards to individuals who may hold a license in another State.

Some States said that DHS's proposal and the REAL ID Act impede ''one driver, one record.'' That would happen, these commenters said, where these authorities require ''a State DMV to take measures to confirm that an applicant has terminated or has taken steps to terminate a REAL ID driver's license or identification card issued in another State.'' One State proposed that DHS change § 37.33(c) to state that a person who applies for a REAL ID in his or her State of residence has ''taken steps to terminate the prior card.'' One State wanted to know how DHS would define ''terminate.''

One State said that because there is no system through which a State could check whether a person already holds a REAL ID driver's license or identification card in another jurisdiction, DHS should eliminate the requirement that States must make such a check. Another State asserts that such a capability should exist now across all fifty States.

Several commenters remarked on the use of technology to promote the ''one driver, one record'' concept. One commenter endorsed smart card-enabled REAL ID documents requiring a one-to-one match. A consulting group described a biometric identifier as the only known manner to prevent one individual from procuring more than one license or identification document. This commenter said DHS should identify and standardize a suitable biometric property and create a privacy-sensitive solution for performing the necessary biometric comparisons.

One commenter said that DHS should have presented and analyzed in detail different architecture models (other than CDLIS) for the system States can use to check whether a REAL ID applicant already holds a REAL ID card issued by another jurisdiction. Noting that a system promoting ''one driver, one record'' must promote privacy, security, and accuracy, another commenter said CDLIS is not a federated query system, but a national database. It commented that simply scaling up this system will not establish a federated query service, but will create a national ID.

One commenter wrote that it is concerned about DHS's failure to articulate what defines a person's unique driver's license or identification card number; the proposed rule is silent on the form this unique number will take and does not specify whether the number will be unique nationally or solely within a single State.

Response: Section 202(d) of the REAL ID Act prohibits States from issuing REAL ID cards to a person who holds a driver's license in another State without confirmation that the person has terminated, or is taking steps to terminate, the other license. We have amended this final rule to clarify this statutory requirement. See § 37.33. DHS supports the concept of one driver, one license. DHS is not, however, authorized under the REAL ID Act to use this final rule to prohibit States from issuing non-REAL ID driver's licenses to persons who hold licenses in other States or to find that a State is not in compliance with the minimum standards of the REAL ID Act if such State issues driver's licenses to persons holding licenses in other States. DHS is limited under its authority in the REAL ID Act to prohibiting States from issuing REAL ID cards to persons who hold licenses in other States or who hold another REAL ID card.

Question 16: Whether DHS should standardize the unique design or color required for non-REAL ID under the REAL ID Act for ease of nationwide recognition, and whether DHS should also implement a standardized design or color for REAL ID licenses.

Comment: A few States said that although a REAL ID should be recognizable as such, a standardized appearance would facilitate counterfeiting. Another State suggested that States should only have to mark REAL ID-compliant cards, not mark non-compliant cards. Other commenters supported the use of an identifier for non-compliant licenses and cards, as DHS would need a mechanism to tell if a license issued before the Act was compliant. NGA recommended placing a restriction code on the front of the license with text on the back to denote whether the license was REAL ID-compliant. AAMVA, several States, and another commenter all argued against standardizing a unique design or color for the non-Real ID cards. Some commenters wrote that DHS had no authority to require States to adopt a standard design or color for the non-REAL ID cards, citing Federalism. One commenter wrote that mandating distinct designs or colors for both REAL ID and regular license and ID cards and requiring non-REAL ID driver's licenses to have an ''invalid for Federal purposes'' designation turns the voluntary card into a mandatory national ID. Several also expressed concern that standardization would make counterfeiting of the cards easier, since counterfeiters would only have to focus on one document. The consequences of successful counterfeiting would be more severe, they said, since the whole system would be compromised and all States would then have to change their cards. Some commenters said that diversity in security features, as long as they met a common performance standard, would be best. Commenters said that a standardized design would increase the perception that a national identification system was being created.

Response: While cards that do not satisfy the requirements of the Act must clearly state on their face that they are not acceptable for official purposes, DHS is not mandating a specific design or color for such cards. DHS agrees with States that recommended marking compliant cards and as such, requires compliant cards to be marked with a DHS-approved security marking.

Comment: Many commenters opposed a REAL ID standard design. One commenter wrote that requiring a single standard configuration will limit the ability of jurisdictions to adapt to changing threats in their particular environment and could drive up costs

unnecessarily. Many States expressed concern about increasing the threat and consequences of counterfeiting. Several States said they should be allowed to continue to use unique designs for their driver's licenses and ID cards (one noting it held great value for State identity), while others argued that States should be allowed to maintain control of the design of their licenses to the greatest extent possible. AAMVA noted that its current Card Design Specification does not require a similar color for all States, although it standardizes security features. AAMVA recommended that ''branding'' be applied to the REAL ID, but it also recognized that this would lead some individuals to believe this was a step toward a national ID card. State commenters wrote that a benefit of a standard color would be to ease training of screeners and help ensure that screeners could easily identify a compliant REAL ID-compliant card.

One commenter wrote that REAL ID should mandate a standardized color or design. However, other commenters wrote that DHS should not mandate a standard design or color, that a standard design is not authorized by the REAL ID Act, that a standardized design is strictly prohibited by the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, and that a uniform REAL ID design would be an ''enormous'' security risk.

Response: DHS is not mandating a single design or color for REAL ID-compliant driver's licenses or identification cards, and recognizes a State's right to have a unique design. However, in response to several commenters, DHS is requiring that cards issued in compliance with REAL ID be marked with a DHS-approved security marking.

V. Regulatory Analyses

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DHS consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

This rule contains the following new information collection requirements. Accordingly, DHS submitted a copy of these sections to OMB for its review. OMB has not yet approved the collection of this information.

This final rule will require States participating in the REAL ID program to meet certain standards in the issuance of driver's licenses and identification cards, including security plans and background checks for certain persons who are involved in the manufacture or production of driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the license (covered employees). This rule will support the information needs of: (a) The Department of Homeland Security, in its efforts to oversee security measures implemented by States issuing REAL ID driver's licenses and identification cards; and (b) other Federal and State authorities conducting or assisting with necessary background and immigration checks for covered employees.

The likely respondents to this proposed information requirement are States (including the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and State agencies (such as Departments of Motor Vehicles).

DHS estimates that each State will submit a certification of compliance or request for extension, together with a security plan. Subsequently, each State will be required to re-certify its compliance with the REAL ID Act every three years on a rolling basis. As part of the certification package, States will be required to submit (1) A copy of their security plan; (2) their documented exceptions and waivers procedures; and (3) a written report on card security and integrity (which must be updated whenever a security feature is modified, added or deleted). DHS estimates that States will spend approximately 42,000 burden hours in the first year to complete the certification requirements. DHS projects that the burden hours will rise to 56,000 hours annually in subsequent years. DHS estimates the cost to the States will be $1.11 million in the first year and $1.48 million every year thereafter, for an annualized cost estimate (over three years) of $1.35 million.

States must subject covered employees to a background check, which includes a name-based and fingerprint-based criminal history records check (CHRC). DHS estimates States will incur costs for employee background checks of $1.44 million in the first year, $0.61 million in the second year, and $0.37 million in the third year, for an annualized cost estimate of $0.80 million.

Finally, States must maintain photographs of applicants and records of certain source documents. DHS estimates that States will incur 2,275,000 hours for information technology (IT) in the first year, and 348,000 hours in subsequent years, for an annualized hour burden estimate (over three years) of 990,333. DHS estimates that ten percent of all IT costs is related to the recordkeeping requirements. Thus, DHS estimates that out of a total one time cost of $601.9 million for all State systems, ten percent, or $60.2 million, will be incurred in the first year, and $9.3 million in the second and third years as a result of this collection of information, for an annualized cost of $26.26 million.

DHS received no comments directed to the information collection burden.

As protection provided by the Paperwork Reduction Act, as amended, 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.

B. Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Although Congress recognized that States will have to expend monies in order to comply with REAL ID, it explicitly stated that the REAL ID Act is binding on the Federal government, and not the States. Moreover, by its terms, UMRA does not apply to regulations ''necessary for the national security''

and those which impose requirements ''specifically set forth in law.'' Thus, as a matter of law, the UMRA requirements do not apply to this final rulemaking even though States will be expending resources. However, the analyses that would otherwise be required are similar to those required under Executive Order 12866, which have been completed and may be found in the detailed Regulatory Evaluation placed in the public docket.

Executive Order 12866 Assessment

DHS has determined that this rule will have an impact of over $100 million and that it raises novel or complex policy issues. Accordingly, this rule is economically significant under Section 3(f)(1) of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget.

DHS has assessed the costs, benefits and alternatives of the requirements finalized by this rule. A complete regulatory impact assessment, as required under Executive Order 12866 and OMB Circular A–4, will be set forth in a separate document in the docket for this regulatory action at *http://www.regulations.gov* at Docket Number DHS–2006–0030. The details of the estimated costs and benefits, including potential ancillary benefits realized by the requirements set forth in this rule, follow the A–4 Accounting Statement. The uncertainty analyses are being recomputed and will be published in the forthcoming final regulatory impact assessment.

The Department of Homeland Security (DHS) is conducting a Regulatory Evaluation of the benefits and costs of the final minimum standards for State-issued driver's licenses and non-driver identification cards pursuant to the REAL ID Act of 2005. These standards will impact the lives of approximately 240 million people and the operations of all 56 State and territorial jurisdictions.

Assumptions

This Regulatory Evaluation covers the eleven-year costs of REAL ID Program deployment and operations. This includes:

- Years One through Four—the three and one-half year period from January 2008 to May 11, 2011 during which States will have time to make the business process changes and investments to meet the standards of REAL ID. In addition, States meeting the interim standards of Material Compliance with the rule must begin enrolling their populations in REAL ID beginning no later than January 1, 2010.
- Years Four through Eleven—the seven year period during which States will continue and complete enrollment of their populations in REAL ID. States will begin issuing fully compliant REAL ID licenses no later than May 11, 2011. Moreover, DHS has adopted an age-based approach to REAL ID enrollment. By December 1, 2014 all individuals born on or after December 1, 1964 (that is, 50 years of age or under) will be required to present a REAL ID if they use a State-issued document for official purposes. Thus, individuals born on or after December 1, 1964 will have a minimum of four years to obtain a REAL ID. Individuals born before December 1, 1964 will have an additional three years to enroll before the final enforcement deadline of December 1, 2017.

The final rule incorporates significant changes to the Notice of Proposed Rulemaking. As a result, we have revised some of the assumptions upon which the original Regulatory Evaluation was based. The revised assumptions are detailed below:

(1) That All States Will Comply in Accordance With the Revised Timeline

DHS recognizes that most, if not all States will be unable to comply by May 2008 and will file requests for extensions that will result in compliance implementation schedules that could mitigate some of the startup costs examined below. Hence, the costs allocated to the period prior to May 2008 will be redistributed to subsequent years.

(2) That 75 Percent of the Nation's DL/ID Holders Will Seek a REAL ID Credential

The original NPRM assumed that 100% of the candidate population would seek to obtain REAL IDs. This assumption was combined with two additional assumptions, namely that:

1. States will not require all individuals to obtain a REAL ID;

2. Some States will continue to issue non-compliant licenses along with REAL IDs.

The Department has reviewed the 100% assumption and concluded that it is unrealistic in light of the latter two assumptions. If States do not require all applicants to obtain REAL IDs, it is highly improbable that 100% of the population will apply. It is difficult to cite any example of a truly voluntary course of action that results in 100% compliance. If States offer a choice of either compliant or non-compliant licenses to applicants, some portion of the population will choose to receive a non-compliant license because:

1. They do not need a REAL ID for Federal official purposes.

2. They already possess a substitute document—for example, a U.S. passport—that will serve the same purpose as a REAL ID.

Thus, the Department has reconsidered and eliminated the assumption that every individual 16 or older will seek to obtain a REAL ID within the timeframe of this analysis.

The difficult question, therefore, is what level of participation in REAL ID can be realistically expected? What should be the primary estimate for participation by the American public in REAL ID?

The Regulatory Evaluation utilizes a primary estimate of 75% based upon the following analysis:

1. A significant number of States will not require that all residents seeking driver's licenses or identification card obtain a REAL ID. Eight states currently issue licenses to individuals who cannot demonstrate lawful states and a significant number of States are likely to make REAL IDs an option.

2. 25% of the population already holds a valid passport and the Department of State anticipates that this figure will increase to approximately 33% in the next few years.[3] Individuals with valid passports do not need to obtain a REAL ID as passports are likely to also be accepted for the same official purposes (i.e., boarding commercial aircraft) as a REAL ID.

3. 20% of the population has never flown on a commercial airplane and 47% flies ''rarely or never.'' [4] This second group is unlikely to need a REAL ID and members of this group are highly unlikely to belong to the group of valid passport holders.

4. These two groups, combining to constitute a group of at least 40% of the population, should not need to obtain a REAL ID as acceptance of identification for official purposes. Assuming that a large proportion of this group will seek to obtain a REAL ID regardless of imminent need, we believe that 25% of the candidate population will not seek to obtain a REAL ID.

(3) States Will Issue Both REAL IDs and Non-REAL IDs

DHS anticipates that States will offer an alternative DL/ID (not acceptable for official purposes) to those who are

[3] Testimony of Maura Harty, Assistant Secretary of State for Consular Affairs, before the Senate Foreign Relations Committee, International Operations and Organizations Subcommittee, June 19, 2007, at *http://travel.state.gov/law/legal/testimony/testimony_806.html.*

[4] Statistics reported in The Airline Handbook, issued by the Air Transport Association and located at *http://members.airlines.org/about/d.aspx?nid=7954* and by the Gallup Organization at *http://www.gallup.com/poll/1579/Airlines.aspx.*

unwilling or unable to obtain a compliant one. A number of States issue or plan to issue licenses to individuals that cannot document lawful status. Other States are expected to allow individuals to hold both a driver's license and identification card. Finally, a number of States have evaluated or expressed interest in offering REAL IDs as an additional, voluntary license. This Regulatory Evaluation assumes that States will deploy a two-tier or multi-tier licensing system. States instead may choose to issue only REAL ID-compliant driver's licenses and identification cards, thereby reducing their operational and system costs.[5]

(4) That All IT Systems Will Be Functional by May 11, 2011

The NPRM assumed that all IT systems would be functional by May 11, 2008. DHS now recognizes that this assumption was overly optimistic. Therefore, DHS has extended the deadline for compliance with the rule until May 11, 2011 to give the States, Federal agencies, and non-governmental organizations like AAMVA the time to complete the communications and IT infrastructure needed to implement REAL ID. Therefore, DHS has recalculated the costs assuming that all required verification data systems be operational and fully populated by May 11, 2011, the deadline for full compliance by States. DHS is working to bring these systems on-line and up to standards as soon as possible and will work with the States to develop alternative procedures.

(5) That State Impact Is Not Uniform Due to Progress Already Made in Some States

States that have already invested in improving the security of their licenses will have to invest far less per capita than States with less secure licenses and issuance processes. Those States that are more advanced will incur lower compliance costs than other States.

(6) The Typical Validity Period of Driver's Licenses in a Given State is the Validity Period for All DL/IDs in That State

DHS is aware that within a State DL/IDs often have varying validity periods but was unable to determine how many people held each of these varying types of credentials and when they were issued. (For more details, see the discussion of Validity Periods in the Status Quo section.) Also, the final regulation creates a one-year license for certain aliens. DHS was able to determine that some people already hold such licenses, but not *how many* people hold them. DHS was also unable to determine how many people will hold them under the REAL ID rule. While this methodology has limitations, using the typical validity period of DL/IDs was the most reliable method available to estimate future issuances.

(7) Those Drivers Who Would Be Required To Comply Later in the Issuance Cycle Will Take Advantage of This Delayed Compliance

DHS has computed the costs for the over age 50 drivers by moving that segment of renewals towards the 2017 deadline. DHS assumes the distribution over time for renewals is similar to the rest of the population. Therefore these license renewals are not bunched up but entered as the same distribution as other drivers but with the last of the pool completing in 2017.

(8) The Cost of Lost/Stolen DLs/IDs and Central Issuance Is Included in the Cost of This Final Rule

The regulatory evaluation for the proposed rule assigned the cost of having to replace a lost or stolen legacy ID with a REAL ID as being a regulatory compliance cost. This means that if an individual loses his/her legacy license, the burden of replacing it with a REAL ID requiring an in-person visit was attributed to this rulemaking. The regulatory evaluation for the final rule employs the assumption that individuals who replace their lost or stolen legacy license will choose to obtain a REAL ID and pay the additional opportunity costs of an in-person visit to the DMV with the required source documents. After careful consideration, we believe that this assumption may be conservative based upon the revised requirements of the final rule. The enrollment periods of REAL ID have been designed to enable DMVs to enroll individuals with REAL IDs on their normal renewal cycles to the maximum extent possible. Individuals simply replacing a lost or stolen license are likely to want a replacement license as quickly as possible and delay the process of obtaining a REAL ID until their scheduled renewals. However, we maintain the original assumption in this economic analysis because we cannot estimate the different rate at which lost or stolen licenses will be replaced with REAL IDs. Therefore, we assume the rate to be 75% or the same as that for renewals.

The regulatory evaluation still assumes that States will move to central issuance because of the high cost of printing equipment for REAL ID cards. However, the final rule provides added flexibility and therefore States may not have to do this. We are not adjusting this regulatory evaluation to account for this due to uncertainties in States' behavior under the revised provisions of this final rule, and because there are remaining requirements in this final rule that may still make central issuance the most efficient response.

(9) The Cost of Security Markings on REAL ID Cards

Based on discussions with State driver's license card vendors, we have estimated the cost for a security marking for compliant cards to be $0.25 per card, and have included this cost estimate in the card production analysis later in this document.

The final rule also requires that if a State issues a license that is not in compliance with REAL ID, the State must by statute and regulation indicate on the document that it is not valid for official Federal purposes. According to U.S. license vendors contacted by DHS,[6] there is typically an upfront one time set up fee for the State, which may include license redesign, system reconfiguration, and other related costs. Based on our analysis of information received from vendors and States, DHS estimates that the added cost would be about $10,000 per State, or $.01 per document. The actual cost will vary depending on the State, vendor and any existing contractual agreement they may have concerning design changes. DHS believes that the added cost of no more than $0.01 per document will be indirectly incurred by those individuals who will be acquiring REAL IDs.

Summary of Major Differences Between the Final Rule and NPRM

Based upon the many comments received, the Final Rule incorporates major changes from the NPRM. The major changes impacting the economic analysis include:

(1) Extension of Deadlines

In the NPRM, DHS proposed that States that would not be able to comply by May 11, 2008, should request an extension of the compliance date no later than February 10, 2008, and encouraged States to submit requests for extension as early as October 1, 2007. During the public comment period, DHS

[5] Eight states currently issue licenses to undocumented immigrants and will—most likely—continue to do so. These States are: Michigan, Maryland, Hawaii, New Mexico, Oregon, Utah, Washington, and Maine.

[6] Based upon conversations between the REAL ID program office and U.S. license vendors, December, 2007.

received numerous comments from States and Territories, State associations, and others, noting that almost all States would be unable to meet the May 2008 compliance deadline. Accordingly, to allow more time for States to implement the provisions of the rule in general and verification systems in particular, DHS is also providing in the final rule the opportunity for States to request extensions of the compliance date beyond the initial extension of December 31, 2009. To obtain a second extension, States must file a Material Compliance Checklist by October 11, 2009. This checklist will document State progress in meeting certain benchmarks toward full compliance with the requirements of this rule. States meeting the benchmarks shall be granted a second extension until no later than May 10, 2011. This would give States making significant progress additional time to meet all of the requirements of this rule.

(2) Extended Enrollment Periods and Risk-Based Enrollment

The NPRM proposed that States determined by DHS to be in full compliance with the REAL ID Act and these implementing regulations by May 11, 2008, would have a five-year phase-in period—until May 11, 2013—to replace all licenses intended for use for official purposes with REAL ID cards.

During the public comment period, a number of States and State associations commented that States obtaining an initial extension of the compliance date until December 31, 2009, would still be required to enroll their existing driver population (estimated to be approximately 240 million) by May 11, 2013—essentially halving the phase-in period. Several commenters suggested that DHS employ a risk-based approach that would permit States and DMVs to focus first on perceived higher-risk individuals while deferring lower-risk individuals to a date beyond May 11, 2013.

DHS agrees with both these comments. Accordingly, in this final rule, DHS is extending the deadline for enforcing the provisions of the Act for all driver's licenses and identification cards until no later than December 1, 2017, but requiring REAL ID-compliant driver's licenses and identification cards for individuals 50 years of age or under (that is, individuals born on or after December 1, 1964) when used for official purposes beginning on December 1, 2014. This will effectively give States an eight-year enrollment period beginning in January 1, 2010 when Materially Compliant States can begin the enrollment process, thus avoiding an unnecessary operational burden on State DMVs from a crush of applicants on or before the original May 11, 2013 compliance date.

(3) Physical Card Security

DHS has modified the proposed card security requirements in response to comments which stated that the requirements were too prescriptive and placed an undue burden on the States. Instead, DHS has proposed a performance-based approach that provides the flexibility for States to implement solutions using a well-designed balanced set of security features for cards that, when effectively combined, provide maximum resistance to counterfeiting, alteration, substitution, and the creation of fraudulent documents from legitimate documents.

(4) Marking of Compliant REAL ID Documents

Based on an analysis of feedback from several commenters, DHS has determined that it would be in the best interest of the nation's security for States to place a security marking on driver's licenses and identification cards that are issued in compliance with the REAL ID Act. Such a marking would facilitate the verification of the authenticity of such documents by Federal agencies requiring identification for official purposes.

(5) Certification and Security Plan Documentation

Based on feedback from commenters, DHS has eased the reporting and documentation requirements placed upon States by circumscribing the scope of security plans and requiring submission of updated plans and certification packages on a rolling, triennial basis.

(6) Address Change and Documentation Requirements

Based on numerous responses, DHS has removed the requirement that an address change must be accomplished through an in-person visit to the DMV. Additionally, there is no requirement in the final rule for States to issue a new card when notified of an address change. Moreover, DHS now allows States fuller discretion over the acceptance of address documents by removing specific requirements that documents used to demonstrate address of principal residence be issued ''monthly'' and ''annually.''

(7) Financial Check

DHS agreed with comments that the financial history check would not be determinative. Therefore, DHS has eliminated the requirement for a financial history check from the final rule.

Costs and Benefits

This Regulatory Evaluation attempts to quantify or monetize the economic benefits of REAL ID. In spite of the difficulty, most everyone understands the benefits of secure and trusted identification. The final minimum standards seek to improve the security and trustworthiness of a key enabler of public and commercial life—State-issued driver's licenses and identification cards. As detailed below, these standards will impose additional burdens on individuals, States, and even the Federal government. These costs, however, have been weighed against the quantifiable and nonquantifiable but no less real benefits to both public and commercial activities achieved by secure and trustworthy identification.

Economic Costs

Implementing the REAL ID Act will impact all 56 jurisdictions, more than 240 million applicants for and holders of State DL/IDs, private sector organizations, and Federal government agencies.

Figure 1: summarizes the estimated marginal economic costs of the final rule over an eleven year period.

Figure 1: Estimated marginal economic cost of REAL ID final rule.

Estimated costs (11 years)	$ million	$ million	$ million (2006 dollars)	Percent total
	7% discounted	3% discounted	Undiscounted	Undiscounted
Costs to States	2,879	3,413	3,965	39.9
Customer Services	636	804	970	9.8
Card production	690	822	953	9.6
Data Systems & IT	1,171	1,352	1,529	15.4

Estimated costs (11 years)	$ million	$ million	$ million (2006 dollars)	Percent total
	7% discounted	3% discounted	Undiscounted	Undiscounted
Security & Information Awareness	365	415	490	4.9
Data Verification	5	7	8	0.1
Certification process	11	13	16	0.2
Costs to Individuals	3,808	4,814	5,792	58.3
Opportunity Costs	3,429	4,327	5,215	52.5
Application Preparation (125.8 million hours)	2,186	2,759	3,327	33.5
Obtain Birth Certificate (20.1 million hours)	348	440	530	5.3
Obtain Social Security Card (1.6 million hours)	31	37	44	0.4
DMV visits (49.8 million hours)	864	1,091	1,315	13.2
Expenditures: Obtain Birth Certificate	379	479	577	5.8
Cost to Private Sector	8	9	9	0.1
Costs to Federal Government	128	150	171	1.7
Social Security card issuance	36	43	50	0.5
Data Verification—SAVE	9	11	14	0.1
Data Systems & IT	65	74	82	0.8
Certification & training	17	21	25	0.3
Total Costs	6,853	8,406	9,939	100.0

Figure 1 shows the primary estimates calculated in both undiscounted 2006 dollars and discounted dollars at both the 3% and the 7% discounted rates. The total, undiscounted eleven-year cost of the final rule is $9.9 billion. Based on a total of 477.1 million issuances over the 11-years of the analysis, the average marginal cost per issuance for States is $8.30. Individuals will incur the largest share of the costs as shown in Figure ES–2. More than 58 percent of the costs (discounted or undiscounted) are associated with preparing applications, obtaining necessary documents, or visiting motor vehicle offices.

The costs shown in Figure ES–2 show a substantial decrease in those reported in the NPRM. In particular, the costs for States are 27% of those estimated for the NPRM. This substantial decrease in costs can be attributed to a number of factors, including a revised assumption that only 75% of DL/ID holders will apply for a REAL ID as well as a less prescriptive, performance-based, and balanced approach to REAL ID implementation. As many commenters suggested, providing additional time for implementation and enrollment of DL/ID holders will allow States to accommodate the enrollment process without disrupting their normal renewal cycles, resulting in a decrease in total REAL ID issuances from 813 million to 477 million issuances. In addition, the undiscounted estimates for card production costs have decreased substantially from $5.8 billion in the NPRM to $953 million in the final rule based on the performance-based approach to card security standards recommended by numerous commenters.

DHS recognizes that many States have made significant progress in improving the integrity of their licenses. DHS also recognizes that the prescriptive technology standards included in the NPRM, compared to the final rule, provided relatively few additional security benefits at great cost to States. Moreover, the estimated opportunity costs to individuals have been reduced from $7.1 to $5.8 billion in undiscounted dollars primarily as a result of the changed assumption that only 75% of DL/ID holders will seek REAL IDs. Individuals will still have to obtain source documents and visit their DMVs under this analysis. Finally, the undiscounted costs to States for data systems and IT have actually increased from $1.4 billion in the NPRM to $1.5 billion in the final rule. This slight increase reflects the critical role of information technology and verification systems in reducing identity theft and identity fraud in the issuance of DL/IDs.

The four largest cost areas, in descending order (in undiscounted dollars) are:

- Opportunity costs to individuals ($5.2 billion),
- Maintaining the necessary data and interconnectivity systems ($1.5 billion),
- Customer service ($970 million), and
- Card production and issuance ($953 million)

The largest impact category is the cost to individuals of obtaining source documents, preparing applications, and visiting DMVs. The magnitude of this category is driven largely by the fact that all applicants for a REAL ID will need to complete an application process similar to those of a first-time driver or a driver moving from one State to another.

The second largest impact category is the creation and maintenance of necessary data and interconnectivity systems. These systems will require substantial up-front effort to create but are likely to require smaller marginal increases in maintenance costs.

The third largest impact is customer service. While the extension of the enrollment period in the final rule will minimize marginal increases in the number or flow of transactions, the rule accounts for costs that increased transaction and wait times will produce. REAL ID should not substantially accelerate the rate of transactions, but the per transaction costs to States will increase.

The fourth largest impact is the production and issuance of the REAL IDs themselves. The final minimum standards are intended to make counterfeit production, tampering and other fraud more difficult. While some State cards may already meet the standards of the final rule, many States may have to upgrade their cards and production processes in response to the rule. These upgrades will also require a substantial up-front effort followed by smaller marginal costs for subsequent years.

Estimated Benefits

The final REAL ID regulation will strengthen the security of personal identification. Though difficult to quantify, nearly all people understand the benefits of secure and trusted identification and the economic, social, and personal costs of stolen or fictitious identities. The REAL ID final rule seeks to improve the security and trustworthiness of a key enabler of public and commercial life—State-

issued driver's licenses and identification cards.

The primary benefit of REAL ID is to improve the security and lessen the vulnerability of federal buildings, nuclear facilities, and aircraft to terrorist attack. The rule gives States, local governments, or private sector entities an option to choose to require the use of REAL IDs for activities beyond the official purposes defined in this regulation. To the extent that States, local governments, and private sector entities make this choice, the rule may facilitate processes which depend on licenses and cards for identification and may benefit from the enhanced security procedures and characteristics put in place as a result of this final rule.

DHS provides a ''break-even'' analysis based on the rule having an impact on the annual probability of the United States experiencing a 9/11 type attack in the 11 years following the issuance of the rule. It is exceedingly difficult to predict the probability and consequences of a hypothetical terrorist attack. DHS believes that those factors cannot be determined for purposes of this benefit analysis. However, for the purposes of this analysis, it is not necessary to assume that there is a probability of being attacked in any particular year.

By making some generalized but conservative assumptions about the costs of attack consequences, DHS determined the reduction in probability of attack that REAL ID will need to bring about so that the expected cost of REAL ID equals its anticipated security benefits. DHS posed the following question: what impact would this rule have to have on the annual probability of experiencing a 9/11 type attack in order for the rule to have positive quantified net benefits? This analysis does not assume that the United States will necessarily experience this type of attack, but rather is attempting to provide the best available information to the public on the impacts of the rule.

DHS also developed an analysis based on the discounted cost of a single terrorist attack comparable to the 9/11 attacks on New York City and Washington, DC taking place sometime over an eleven-year span. The agency determined at what point the final rule would be cost-beneficial given the likelihood of an attack and the effectiveness of preventing the attack.

The final rule on REAL ID is likely to produce potential ancillary benefits as well. It will be more difficult to fraudulently obtain a legitimate license and more costly to create a false license, which could reduce identity theft, unqualified driving, and fraudulent activities facilitated by less secure driver's licenses such as fraudulent access to government subsidies and welfare programs, illegal immigration, unlawful employment, unlawful access to firearms, voter fraud and possibly underage drinking and smoking. DHS assumes that REAL ID will bring about changes on the margin that will potentially increase security and reduce illegal behavior. Because the size of the economic costs that REAL ID serves to reduce on the margin are so large, however, a relatively small impact of REAL ID may lead to significant benefits.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980[7] (RFA), as amended, was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' The following analysis suggests that the rule will not have a significant economic impact on a substantial number of small entities.

The Department is implementing the regulations in order to enact the requirements outlined in the REAL ID Act.[8] This rule establishes minimum standards for the issuance of State-issued driver's licenses and non-driver identification cards (DL/IDs). These minimum standards will:

- Enhance the security features of DL/IDs, rendering them more difficult to counterfeit, tamper with, or cannibalize;
- Ensure that holders of unexpired REAL IDs are lawfully present in the United States;
- Enhance physical security of materials and production locations to reduce the likelihood of theft of materials and infiltration of DMVs by nefarious individuals;
- Enhance identity source document requirements and verifications to reduce the number of DL/IDs issued by DMVs to persons committing identity fraud; and,
- Ensure that a REAL ID driver's license holder is licensed in only one State.

In short, these standards are designed to ensure that holders of unexpired REAL IDs are who they say they are and that they are lawfully present in the United States.

DHS did not receive any public comments on the Initial Regulatory Flexibility Analysis that was issued in support of the NPRM during the public comment period. All public comments are available for the public to view at the Federal Docket Management System: *http://www.regulations.gov.*

As part of this rulemaking effort, DHS has summarized and responded to all public comments relating to the Regulatory Evaluation issued with the NPRM. Comment summaries and responses are located in the preamble to the final rule, which is also available at *http://www.regulations.gov* and in the **Federal Register**.

The rule directly regulates States, which by definition are not small entities. The rule indirectly regulates entities that accept State-issued DL/IDs for official purposes. The rule defines those purposes as accessing Federal facilities, entering nuclear power plants and boarding federally regulated commercial aircraft. The entities that accept DL/IDs for those purposes include the Federal Government, operators of nuclear power plants and entities examining personal identity documents of people boarding federally regulated commercial aircraft. The rule does not require action from any of these three entities. However, these entities are likely to engage in some activity to ensure that they comply with the Act. The remainder of this section estimates the number of small entities that are affected in this indirect way.

The Federal Government is not a small entity. Therefore, no small entities are affected by the prohibition on accepting State-issued DL/IDs that are not REAL IDs to access Federal facilities.

[7] Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (codified at 5 U.S.C. § 601).

[8] REAL ID Act of 2005. Pub. L. 13, 109th Cong., 1st Sess. (May 11, 2005), 201, 202.

Nuclear power plants, though not directly regulated, may experience indirect impacts from this regulation. A nuclear power plant qualifies as a small entity if ''including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' [9] With only three exceptions, every nuclear power plant in the United States produced more than 4 million megawatt hours in fiscal year 2005.[10] However, companies producing more than 12 million megawatt hours own each of those three plants.[11] None of the nuclear power plants qualifies as small businesses using the SBA definition. Therefore, no small entities are affected by the prohibition on accepting State-issued DL/IDs that are not REAL IDs to enter nuclear power plants.

Entities examining identity documents of people who are boarding federally regulated commercial aircraft will not be directly regulated by the rulemaking. However, they may experience indirect effects. Different types of entities examine personal identity documents of people boarding federally regulated commercial aircraft. Currently, this responsibility falls on the entity with whom passengers check their luggage, the entity examining boarding passes and IDs immediately in front of TSA screening checkpoints, and, when completed to fulfill federal requirements, the entities examining IDs directly before allowing passengers to board aircraft. The easiest group of entities to identify in this category is the airlines that enplane from and/or deplane into the sterile area of an airport.[12] The Small Business Administration considers companies operating either scheduled or non-scheduled chartered passenger air transportation to be small entities if they have fewer than 1,500 employees.[13] Using these criteria, DHS has identified 24 specific small entities that offer scheduled or non-scheduled air passenger transportation and that enplane from or deplane into an airport sterile area. Other federally regulated commercial aircraft include charter flights, air taxis, scenic air tours and other similar operations where the transportation of passengers for compensation comprises the majority of their revenues. Many of these entities would qualify as small entities under the SBA definition. SBA data show that, overall, 2,719 of the 2,877 firms engaged in air transportation (NAICS 481) had fewer than 500 employees in 2004.[14] Nearly all firms in the air transportation industry fall well below the 1,500-employee size standard to qualify as a small entity. (Note that the federal requirements may not require all of these firms to examine passenger identity documents prior to boarding.)

DHS estimates that each employee accepting DL/IDs for official purposes will require two hours of training. This training will assist personnel in identifying the differences between REAL IDs and other State-issued DL/IDs. The training will also inform personnel about which States are or are not compliant during the enrollment period. In order to assess the cost of this training, DHS calculated the fully loaded wage rate of $22.95 per hour for airline ticket counter agents and $22.50 per hour for airport checkpoint staff. Multiplying the wage rates by the estimated two hours to complete the training yields estimates of $45.90 and $45.01 per-employee for ticket counter agents and checkpoint staff, respectively. The next step to determine if firms' action will have a significant impact is to divide the summed products of wage rates and trained employees by firm revenue. Doing so yields the impact on the firm as a percent of their total receipts. However, data on how many employees firms will train do not exist on an industry level, much less at the firm level throughout the industry. Alternatively, a threshold analysis can determine at what point the revenue to trained employee ratio would constitute a one or three percent impact for a firm.

The Department has determined threshold levels that will cause an indirect impact equal to or less than one percent and equal to or greater than three percent of an entity's total revenue. If a firm's ratio is higher than the one percent threshold, the economic impact for that firm is not significant. If the ratio is lower than the three percent threshold, the economic impact will be larger than three percent of the firm's revenue. The threshold values are measured as the ratio of total revenue to the number of employees to be trained regarding REAL ID. If the amount of a firm's revenue per trained counter agent is more than $4,590, then the effect is less than one percent of total revenue. If one percent requires revenue per agent of $4,590, then the three percent threshold revenue per agent lies at $1,530. If a firm's revenue per counter agent is less than $1,530, then the effect will be greater than three percent. The same approach can be applied to airport checkpoint staff yielding $4,501 at one percent and $1,500 at three percent. (See Figure 2)

[9] Small Business Administration. Small Business Size Standards Matched to North American Industrial Classification System. Footnote #1. Available at *http://www.sba.gov/size/sizetable2002.html#fn1.* Accessed July 14, 2006.

[10] Calculations based on data from the Energy Information Administration. U.S. Department of Energy. Monthly Nuclear Utility Generation by State and Reactor, 2004 and Monthly Nuclear Utility Generation by State and Reactor, 2005. Available at *http://www.eia.doe.gov/cneaf/nuclear/page/nuc_generation/gensum.html.* Accessed July 14, 2006.

[11] Conclusion based on an Internet search conducted on July 14, 2006 of the three specific power plants and the companies that own and operate them.

[12] ''Sterile area'' is defined in 49 CFR 1540.5 and generally means an area with access limited to persons who have undergone security screening by TSA. Therefore, only TSA-regulated airports have sterile areas.

[13] U.S. Small Business Administration. Small Business Size Standards Matched to North American Industrial Classification System. NAICS 481111 and 481211. Available at *http://www.sba.gov/size/sizetable2002.html.* Accessed July 14, 2006.

[14] U.S. Small Business Administration. U.S. Data Classified by Employment Size of Firm: All industries, 2003–2004. Available at *http://www.sba.gov/advo/research/data.html.* Accessed 4 Oct 2006.

Figure 2: FRFA threshold for significant impact

Employee type	Airport ticket counter agent	Airport checkpoint staff
Fully loaded wage	$ 22.95	$ 22.50
Hours of training	2	2
Training cost per employee	$ 45.90	$ 45.00

Impact size (as % of revenue)	Total revenue to trained employee ratio (X : 1)	
1%	$ 4,590	$ 4,500
2%	2,295	2,250
3%	1,530	1,500

Applying the one percent threshold—the most stringent—to the 24 scheduled service firms specifically identified as small entities suggests that training employees regarding REAL ID will not impose a significant economic impact on a substantial number of small entities. Dividing a firm's total 2005 revenue by $4,590 yields an estimate of how many employees would need to be trained before the indirect impact reaches the one percent of total revenue threshold. Comparing that estimate to the number of employees at each firm in 2005 reveals that companies would need to train anywhere from 6 to 56 times their total number of employees, including those who will not examine identification documents.[15]

The aggregated nature of industry-wide data does not allow for a firm-by firm analysis of the more than 2,719 small firms involved in air transportation. However, analysis of firms grouped by receipts in 2002 provides insight into the likelihood that entities will experience a significant indirect impact. Dividing receipts by the one percent threshold of $4,590 for each group estimates the number of employees that would result in a one percent impact on each group. The ratio of actual reported employees to threshold employees reveals that every group for which data is available would need to train multiple times more employees regarding REAL ID than they actually employ. The smallest ratio (largest impact) is for scheduled passenger air transportation (NAICS 48111) that earned less than $100,000, implying that they would need to train more than 11 times the number of people than they employed before the impact would reach one percent of their receipts.[16] The largest ratio (smallest impact in terms of percent of revenues) would fall on nonscheduled chartered passenger firms (NAICS 481211) earning more than $100 million. These firms would need to train more than 85 times the size of their workforce to reach the one percent impact threshold.

The combination of the firm specific analysis and the analysis of aggregated firms within receipt categories suggests that the indirect impact of training agents regarding REAL ID for the official purpose of boarding federally regulated commercial aircraft will not constitute a significant economic impact on a substantial number of small entities.

The above analyses show that it is unlikely that the prohibition on accepting State-issued DL/IDs unless they are REAL IDs will have a significant economic impact on a substantial number of small entities. Further, the only directly regulated entities are States, which by definition are not small entities. Therefore, the Department concludes that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. There is no international standard for State-issued driver licenses or non-driver identification cards. DHS has determined that this rule will not have an impact on trade.

Unfunded Mandates Assessment

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires agencies 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 objective of the rule. Agencies are also required to seek input from the States in the preparation of such rules.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows DHS to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

As set forth in section 202(a)(1) of the REAL ID Act, the law is binding on Federal agencies—not on the States.

[15] Data from BTS (Form 41, Schedule P10); Duns and Bradstreet; Yahoo! Finance, and; Hoovers.com.

[16] Data from U.S. Small Business Administration. U.S. All Industries by Receipt Size: 2002. Available online at *http://www.sba.gov/advo/research/data.html.* Accessed 4 Oct 2006.

Indeed, in the Conference Report, Congress specifically stated that the ''application of the law is indirect, and hence States need not comply with the listed standards.'' Conf. Rep. at 177.

Moreover, as indicated above, UMRA excludes from its scope, regulations which are required for national security reasons. National security was a primary motivator for the REAL ID Act; indeed, the Act itself is an effort to implement recommendations of the 9/11 Commission, and Congress took pains to explain the connection between REAL ID and national security, with over a dozen references to ''terrorists'' or ''terrorism'' in the Conference Report. *See 9/11 Commission Public Report,* Chapter 12.4; Conf. Rep., 179—183.

Notwithstanding the voluntary nature of the REAL ID Act, DHS assumes that States will willingly comply with the regulation to maintain the conveniences enjoyed by their residents when using their State-issued driver's licenses and non-driver identity cards for official purposes, particularly as it pertains to domestic air travel. While, for the reasons set forth above, DHS believes that the REAL ID Act does not constitute an unfunded mandate, DHS nevertheless believes that many States may find noncompliance an unattractive option.

Based on that knowledge, DHS has taken steps to comply with the requirements of UMRA. Specifically, DHS has analyzed the estimated cost to States and considered appropriate alternatives to, and benefits derived from, the final regulation. Moreover, DHS has solicited input from State and local governments in the preparation of this final rule.

C. Executive Order 13132, Federalism

Executive Order 13132 requires each Federal agency to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' The phrase ''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.''

Executive Order 13132 lists as a ''Fundamental Federalism Principle'' that ''[f]ederalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.'' The issue covered by this final rule is, without question, national in scope and significance. It is also one in which the States have significant equities.

While driver's licenses and identification cards are issued by States, they are also the most widely-used identification documents. Not surprisingly, they are very frequently used by individuals to establish their identities in the course of their interactions with the Federal Government (e.g., when entering secure Federal facilities or passing through Federally-regulated security procedures at U.S. airports). The fact that the use of driver's licenses as identity documents is an issue that is ''national in scope'' is illustrated by the events of September 11, 2001. A number of the terrorists who hijacked U.S. aircraft on that day had, through unlawful means, obtained genuine driver's licenses; these documents were used to facilitate the terrorists' operations against the United States.[17]

1. DHS has Considered the Federalism Implications of the REAL ID Rule

Section 3 of the Executive Order sets forth certain ''Federalism Policymaking Criteria.'' In formulating or implementing policies with ''Federalism implications,'' agencies are required, to the extent permitted by law, to adhere to certain criteria. DHS has considered this action in light of the criteria set forth in Executive Order 13132 § 3(a)–(d) and submits the following:

(a) Constitutional Principles and Maximizing the Policymaking Discretion of the States

The rule is being promulgated in strict adherence to constitutional principles, and the limits of DHS's constitutional and statutory authority have been carefully considered. Congress, through the REAL ID Act, has mandated that Federal agencies refuse to accept for official purpose, State-issued driver's licenses or identification cards unless DHS has determined that the issuing State is in compliance with the statutorily-mandated minimum standards for such identification documents. Notwithstanding the clear statutory mandate directing this rulemaking action, DHS has taken steps, in consultation with the States, to maximize policymaking discretion at the State level wherever possible. For example, States may establish an exceptions process that would allow each State participating in REAL ID to exercise maximum discretion in responding to exigencies arising in the course of verifying an individual's identity.

DHS also recognizes that each State's unique situation mandates that the maximum possible latitude be allowed to States in fulfilling the statutory mandate that certain employees undergo background investigations. The final rule provides parameters for use by the States in determining which employees are ''covered employees'' and thus subject to the statutory background check requirements, but allows the individual States to determine which employees fall into categories deemed to be covered as defined under this final rule (e.g. DMV ''employees or contractors who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card.'').

States are also given the discretion to find the best way to determine an individual driver's license or identification card applicant's address of principal residence, and provides greater latitude in accepting alternatives or making exceptions based on State practices.

In other aspects of the regulation DHS has prescribed baseline requirements while allowing States the discretion to impose more stringent standards, the greatest example of which is in the area of protecting personally identifiable information collected for REAL ID purposes. Most significantly, each State retains the discretion to opt out of REAL ID in its entirety.

(b) Action Limiting the Policymaking Discretion of the States

As indicated above, the final rule strives to maximize State policymaking discretion on two levels: First, because a State's participation in REAL ID is optional; and second, because of the policymaking discretion incorporated into the regulation for States that do choose to participate. DHS believes that it has incorporated the maximum possible State discretion consistent with the purposes of the statute into this action.

(c) Avoiding Intrusive Federal Oversight

Consistent with Congress' vision for REAL ID (*see* § 202(a)(2) of the Act), States that choose to participate in the program will be responsible for monitoring their own compliance. Under the Act and the final regulations, the Secretary of Homeland Security will determine whether a State is meeting the requirements of the Act based on certifications made by the State and

[17] *See* 9/11 Commission Report, Chapter 12.4.

DHS has adopted a certification process similar to that used by DOT in its regulations governing State administration of commercial driver's licenses. States receiving adverse determinations will have the opportunity for an internal appeals process as well as judicial review.

(d) Formulation of Policies With Federalism Implications

DHS recognizes both the important national interest in secure identity documents and the Federalism implications of the policies which underpin this rule. Accordingly, DHS has welcomed and encouraged State participation in this process and has sought, where possible, to draft this regulation in such a way as to maximize State discretion.

Where the exigencies of national security and the need to prevent identity fraud have militated in favor of a uniform national standard (e.g., baseline security features on identity cards and background check requirements), DHS has, as reflected above, consulted with States in order to ensure that the uniform standards prescribed could be attained by the States and would reflect the accumulated security experience of State motor vehicles administrations.

2. The REAL ID Final Rule Complies With the Regulatory Provisions of Executive Order 13132

Under § 6 of Executive Order 13132, an agency may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or consults with State and local officials early in the process of developing the proposed regulation. Moreover, an agency may not issue a regulation that has Federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

(a) The Final Rule Does Not Preempt State Law

As detailed elsewhere in this document, the REAL ID Act is binding on Federal agencies, rather than on States. The rule would not formally compel any State to issue driver's licenses or identification cards that will be acceptable for Federal purposes. Importantly, under this scheme, ''[a]ny burden caused by a State's refusal to regulate will fall on those [citizens who need to acquire and utilize alternative documents for Federal purposes], rather than on the State as a sovereign.'' [18] In other words, the citizens of a given State—not Congress—ultimately will decide whether the State complies with this regulation and the underlying statute. DHS has concluded that the rule is consistent with the Tenth Amendment to the U.S. Constitution and does not constitute an impermissible usurpation of State sovereignty. Rather, it is a permissible ''program of cooperative Federalism'' in which the Federal and State governments have acted voluntarily in tandem to achieve a common policy objective.[19]

(b) DHS Has Engaged in Extensive Consultations With the States

The statutory mandate and the lack of preemption both satisfy the requirements of Executive Order 13132. Nevertheless, in the spirit of Federalism, and consistent with § 205(a) of the REAL ID Act, DHS has engaged in extensive consultations with the States prior to issuing this final rule. As set forth earlier in this preamble of this rule, DHS held meetings and solicited input from various States and such stakeholders as the National Governors Association and the National Conference of State Legislatures.

In particular, during the comment period, DHS hosted sessions that were available via webcast across the country to engage State Governors' chiefs of staff, homeland security directors in the States, and motor vehicles administrators, as well as a separate session with State legislators. DHS also convened the various stakeholder representatives that were identified as participants in the negotiated rulemaking group established under section 7212 of the Intelligence Reform and Terrorism Prevention Act. Further, DHS held a public meeting in Sacramento, California that was available nationwide via webcast and received comments from the public on a variety of topics, including consumer and personal impacts, privacy/security, electronic verification systems, funding/implementation, and law enforcement.

(c) DHS Recognizes the Burdens Inherent in Complying With the Regulations

Notwithstanding both the statutory mandate and the Federal (rather than State) focus of the REAL ID Act, DHS recognizes that, as a practical matter, States may view noncompliance with the requirements of REAL ID as an unattractive alternative. DHS also recognizes that compliance with the rule carries with it significant costs and logistical burdens, for which Federal funds are generally not available. The costs (to the States, the public and the Federal Government) of implementing this rule are by no means inconsiderable and have been detailed in the regulatory evaluation accompanying this rule.

As indicated above, Executive Order 13132 prohibits any agency from implementing a regulation with Federalism implications which imposes substantial direct compliance costs on State and local governments unless the regulation is required by statute, the Federal Government will provide funds to pay for the direct costs, or the agency has consulted with State and local officials. In such a case, the agency must also incorporate a Federalism statement into the preamble of the regulation and make available to the Office of Management and Budget any written communications from State and local officials. See Executive Order 13132, section 6(b).

This rule is required by the REAL ID Act. DHS has (as detailed above) consulted extensively with State and local officials in the course of preparing this regulation. Finally, DHS has incorporated this Federalism Statement into the preamble to assess the Federalism impact of its REAL ID regulation.

3. REAL ID and Federalism

The issuance of driver's licenses has traditionally been the province of State governments; DHS believes that, to the extent practicable, it should continue as such. However, given the threat to both national security and the economy presented by identity fraud, DHS believes that certain uniform standards should be adopted for the most basic identity document in use in this country. DHS has, in this final rule, attempted to balance State prerogatives with the national interests at stake.

D. Environmental Impact Analysis

At the time of the proposed rule, DHS sought and received comment on the potential environmental impact of the physical standards and other proposed requirements under this rule. DHS carefully considered those comments in its evaluation of the potential environmental impacts of the rule. DHS concludes that the rule's potential impacts are minimal and this rule is a part of a category of actions that do not individually or cumulatively have a significant impact on the human environment and do not require a more

[18] *New York* v. *U.S.*, 505 U.S. 144, 173 (1992).

[19] *See* id. at 167.

extensive evaluation under the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq. and Council on Environmental Quality (CEQ) regulations, 40 CFR parts 1501–1508. DHS Categorical Exclusion A3 (Table 1 Management Directive 5100.1). Categorical Exclusion A3 applies to the promulgation of this rule, since it is of an administrative and procedural nature that does not force an immediate action but only lays the foundation for subsequent action. The categorical exclusion applies only to the promulgation of the REAL ID rule. Environmental impacts that may be associated with any follow-on DHS activity, such as approval of grant funding, must be reviewed if and when the subsequent program actions create the potential for environmental impact.

E. Energy Impact Analysis

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

F. Executive Order 13175 (Tribal Consultation)

DHS has analyzed this final rule under Executive Order 13175 (entitled ''Consultation and Coordination with Indian Tribal Governments'', issued November 6, 2000). Executive Order 13175 states that no agency shall promulgate regulations that have tribal implications, that impose substantial direct compliance costs on Indian tribal governments, or that are not required by statute unless the agency first consults with tribal officials and prepares a tribal summary impact statement.

DHS has determined that this final rule will not have a substantial direct effect on one or more Indian tribes and will not impose substantial direct compliance costs on Indian tribal governments. This rule also does not seek to preempt any tribal laws. This final rule does not satisfy the tribal implications requirement in that it is a rule of general applicability that establishes minimum standards for State-issued driver's licenses and identification cards that Federal agencies will accept for official purposes on or after May 11, 2008, a statutory mandate under the REAL ID Act of 2005. Therefore, tribal consultation and a tribal summary impact statement are not required.

List of Subjects in 6 CFR Part 37

Document security, driver's licenses, identification cards, incorporation by reference, motor vehicle administrations, physical security.

The Amendments

■ For the reasons set forth above, the Department of Homeland Security amends 6 CFR Chapter I by adding a new Part 37 as follows:

TITLE 6—HOMELAND SECURITY

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY, OFFICE OF THE SECRETARY

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

Subpart A—General

Sec.

37.1 Applicability.
37.3 Definitions.
37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.

Subpart B—Minimum Documentation, Verification, and Card Issuance Requirements

37.11 Application and documents the applicant must provide.
37.13 Document verification requirements.
37.15 Physical security features for the driver's license or identification card.
37.17 Requirements for the surface of the driver's license or identification card.
37.19 Machine readable technology on the driver's license or identification card.
37.21 Temporary or limited-term driver's licenses and identification cards.
37.23 Reissued REAL ID driver's licenses and identification cards.
37.25 Renewal of REAL ID driver's licenses and identification cards.
37.27 Driver's licenses and identification cards issued during the age-based enrollment period.
37.29 Prohibition against holding more than one REAL ID card or more than one driver's license.

Subpart C—Other Requirements

37.31 Source document retention.
37.33 DMV databases.

Subpart D—Security at DMVs and Driver's License and Identification Card Production Facilities

37.41 Security plan.
37.43 Physical security of DMV production facilities.
37.45 Background checks for covered employees.

Subpart E—Procedures for Determining State Compliance

37.51 Compliance—general requirements.
37.55 State certification documentation.
37.59 DHS reviews of State compliance.
37.61 Results of compliance determination.
37.63 Extension of deadline.
37.65 Effect of failure to comply with this Part.

Subpart F—Driver's Licenses and Identification Cards Issued Under Section 202(d)(11) of the REAL ID Act

37.71 Driver's licenses and identification cards issued under section 202(d)(11) of the REAL ID Act.

Authority: 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

Subpart A—General

§ 37.1 Applicability.

(a) Subparts A through E of this part apply to States and U.S. territories that choose to issue driver's licenses and identification cards that can be accepted by Federal agencies for official purposes.

(b) Subpart F establishes certain standards for State-issued driver's licenses and identification cards issued by States that participate in REAL ID, but that are not intended to be accepted by Federal agencies for official purpose under section 202(d)(11) of the REAL ID Act.

§ 37.3 Definitions.

For purposes of this part:

Birth certificate means the record related to a birth that is permanently stored either electronically or physically at the State Office of Vital Statistics or equivalent agency in a registrant's State of birth.

Card means either a driver's license or identification card issued by the State Department of Motor Vehicles (DMV) or equivalent State office.

Certification means an assertion by the State to the Department of Homeland Security that the State has met the requirements of this Part.

Certified copy of a birth certificate means a copy of the whole or part of a birth certificate registered with the State that the State considers to be the same as the original birth certificate on file with the State Office of Vital Statistics or equivalent agency in a registrant's State of birth.

Covered employees means Department of Motor Vehicles employees or contractors who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card.

Data verification means checking the validity of data contained in source documents presented under this regulation.

DHS means the U.S. Department of Homeland Security.

DMV means the Department of Motor Vehicles or any State Government entity that issues driver's licenses and identification cards, or an office with equivalent function for issuing driver's licenses and identification cards.

Determination means a decision by the Department of Homeland Security that a State has or has not met the requirements of this Part and that Federal agencies may or may not accept the driver's licenses and identification cards issued by the State for official purposes.

Digital photograph means a digital image of the face of the holder of the driver's license or identification card.

Document authentication means determining that the source document presented under these regulations is genuine and has not been altered.

Domestic violence and dating violence have the meanings given the terms in section 3, Universal definitions and grant provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at section 40002, Definitions and grant provisions, 42 U.S.C. 13925, or State laws addressing domestic and dating violence.

Driver's license means a motor vehicle operator's license, as defined in 49 U.S.C. 30301.

Duplicate means a driver's license or identification card issued subsequent to the original document that bears the same information and expiration date as the original document and that is reissued at the request of the holder when the original is lost, stolen, or damaged and there has been no material change in information since prior issuance.

Federal agency means all executive agencies including Executive departments, a Government corporation, and an independent establishment as defined in 5 U.S.C. 105.

Federally-regulated commercial aircraft means a commercial aircraft regulated by the Transportation Security Administration (TSA).

Full compliance means that the Secretary or his designate(s) has determined that a State has met all the requirements of Subparts A through E.

Full legal name means an individual's first name, middle name(s), and last name or surname, without use of initials or nicknames.

IAFIS means the Integrated Automated Fingerprint Identification System, a national fingerprint and criminal history system maintained by the Federal Bureau of Investigation (FBI) that provides automated fingerprint search capabilities.

Identification card means a document made or issued by or under the authority of a State Department of Motor Vehicles or State office with equivalent function which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

INS means the former-Immigration and Naturalization Service of the U.S. Department of Justice.

Lawful status: A person in lawful status is a citizen or national of the United States; or an alien: lawfully admitted for permanent or temporary residence in the United States; with conditional permanent resident status in the United States; who has an approved application for asylum in the United States or has entered into the United States in refugee status; who has a valid nonimmigrant status in the United States; who has a pending application for asylum in the United States; who has a pending or approved application for temporary protected status (TPS) in the United States; who has approved deferred action status; or who has a pending application for lawful permanent residence (LPR) or conditional permanent resident status. This definition does not affect other definitions or requirements that may be contained in the Immigration and Nationality Act or other laws.

Material change means any change to the personally identifiable information of an individual as defined under this part. Notwithstanding the definition of personally identifiable information below, a change of address of principal residence does not constitute a material change.

Material compliance means a determination by DHS that a State has met the benchmarks contained in the Material Compliance Checklist.

NCIC means the National Crime Information Center, a computerized index of criminal justice information maintained by the Federal Bureau of Investigation (FBI) that is available to Federal, State, and local law enforcement and other criminal justice agencies.

Official purpose means accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants.

Passport means a passport booklet or card issued by the U.S. Department of State that can be used as a travel document to gain entry into the United States and that denotes identity and citizenship as determined by the U.S. Department of State.

Personally identifiable information means any information which can be used to distinguish or trace an individual's identity, such as their name; driver's license or identification card number; social security number; biometric record, including a digital photograph or signature; alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as a date and place of birth or address, whether it is stored in a database, on a driver's license or identification card, or in the machine readable technology on a license or identification card.

Principal residence means the location where a person currently resides (i.e., presently resides even if at a temporary address) in conformance with the residency requirements of the State issuing the driver's license or identification card, if such requirements exist.

REAL ID Driver's License or Identification Card means a driver's license or identification card that has been issued by a State that has been certified by DHS to be in compliance with the requirements of the REAL ID Act and which meets the standards of subparts A through D of this part, including temporary or limited-term driver's licenses or identification cards issued under § 37.21.

Reissued card means a card that a State DMV issues to replace a card that has been lost, stolen or damaged, or to replace a card that includes outdated information. A card may not be reissued remotely when there is a material change to the personally identifiable information as defined by the Rule.

Renewed card means a driver's license or identification card that a State DMV issues to replace a renewable driver's license or identification card.

SAVE means the DHS Systematic Alien Verification for Entitlements system, or such successor or alternate verification system at the Secretary's discretion.

Secretary means the Secretary of Homeland Security.

Sexual assault and stalking have the meanings given the terms in section 3, universal definitions and grant provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109–162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at section 40002, Definitions and grant provisions, 42

U.S.C. 13925, or State laws addressing sexual assault and stalking.

Source document(s) means original or certified copies (where applicable) of documents presented by an applicant as required under these regulations to the Department of Motor Vehicles to apply for a driver's license or identification card.

State means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State address confidentiality program means any State-authorized or State-administered program that—

(1) Allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking to keep, obtain, and use alternative addresses; or

(2) Provides confidential record-keeping regarding the addresses of such victims or other categories of persons.

Temporary lawful status: A person in temporary lawful status is a person who: has a valid nonimmigrant status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for LPR or conditional permanent resident status.

Verify means procedures to ensure that:

(1) The source document is genuine and has not been altered (i.e., ''document authentication''); and

(2) The identity data contained on the document is valid (''data verification'').

§ 37.5 Validity periods and deadlines for REAL ID driver's licenses and identification cards.

(a) Driver's licenses and identification cards issued under this part, that are not temporary or limited-term driver's licenses and identification cards, are valid for a period not to exceed eight years. A card may be valid for a shorter period based on other State or Federal requirements.

(b) On or after December 1, 2014, Federal agencies shall not accept a driver's license or identification card for official purposes from individuals born after December 1, 1964, unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(c) On or after December 1, 2017, Federal agencies shall not accept a driver's license or identification card for official purposes from any individual unless such license or card is a REAL ID-compliant driver's license or identification card issued by a State that has been determined by DHS to be in full compliance as defined under this subpart.

(d) Federal agencies cannot accept for official purpose driver's licenses and identification cards issued under § 37.71 of this rule.

Subpart B—Minimum Documentation, Verification, and Card Issuance Requirements

§ 37.11 Application and documents the applicant must provide.

(a) The State must subject each person applying for a REAL ID driver's license or identification card to a mandatory facial image capture, and shall maintain photographs of individuals even if no card is issued. The photographs must be stored in a format in accordance with § 37.31 as follows:

(1) If no card is issued, for a minimum period of five years.

(2) If a card is issued, for a period of at least two years beyond the expiration date of the card.

(b) *Declaration.* Each applicant must sign a declaration under penalty of perjury that the information presented on the application is true and correct, and the State must retain this declaration. An applicant must sign a new declaration when presenting new source documents to the DMV on subsequent visits.

(c) *Identity.* (1) To establish identity, the applicant must present at least one of the following source documents:

(i) Valid, unexpired U.S. passport.

(ii) Certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth.

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS–240, DS–1350 or FS–545.

(iv) Valid, unexpired Permanent Resident Card (Form I–551) issued by DHS or INS.

(v) Unexpired employment authorization document (EAD) issued by DHS, Form I–766 or Form I–688B.

(vi) Unexpired foreign passport with a valid, unexpired U.S. visa affixed accompanied by the approved I–94 form documenting the applicant's most recent admittance into the United States.

(vii) Certificate of Naturalization issued by DHS, Form N–550 or Form N–570.

(viii) Certificate of Citizenship, Form N–560 or Form N–561, issued by DHS.

(ix) REAL ID driver's license or identification card issued in compliance with the standards established by this part.

(x) Such other documents as DHS may designate by notice published in the **Federal Register**.

(2) Where a State permits an applicant to establish a name other than the name that appears on a source document (for example, through marriage, adoption, court order, or other mechanism permitted by State law or regulation), the State shall require evidence of the name change through the presentation of documents issued by a court, governmental body or other entity as determined by the State. The State shall maintain copies of the documentation presented pursuant to § 37.31, and maintain a record of both the recorded name and the name on the source documents in a manner to be determined by the State and in conformity with § 37.31.

(d) *Date of birth.* To establish date of birth, an individual must present at least one document included in paragraph (c) of this section.

(e) *Social security number (SSN).* (1) Except as provided in paragraph (e)(3) of this section, individuals presenting the identity documents listed in § 37.11(c)(1) and (2) must present his or her Social Security Administration account number card; or, if a Social Security Administration account card is not available, the person may present any of the following documents bearing the applicant's SSN:

(i) A W–2 form,

(ii) A SSA–1099 form,

(iii) A non-SSA–1099 form, or

(iv) A pay stub with the applicant's name and SSN on it.

(2) The State DMV must verify the SSN pursuant to § 37.13(b)(2) of this subpart.

(3) Individuals presenting the identity document listed in § 37.11(c)(1)(vi) must present an SSN or demonstrate non-work authorized status.

(f) *Documents demonstrating address of principal residence.* To document the address of principal residence, a person must present at least two documents of the State's choice that include the individual's name and principal residence. A street address is required except as provided in § 37.17(f) of this part.

(g) *Evidence of lawful status in the United States.* A DMV may issue a REAL ID driver's license or identification card only to a person who has presented satisfactory evidence of lawful status.

(1) If the applicant presents one of the documents listed under paragraphs

(c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(1)(iv), (c)(1)(vii) or (c)(1)(viii) of this section, the issuing State's verification of the applicant's identity in the manner prescribed in § 37.13 will also provide satisfactory evidence of lawful status.

(2) If the applicant presents one of the identity documents listed under paragraphs (c)(1)(v) or (c)(1)(vi), or (c)(1)(ix) of this section, the issuing State's verification of the identity document(s) does not provide satisfactory evidence of lawful status. The applicant must also present a second document from § 37.11(g)(1) or documentation issued by DHS or other Federal agencies demonstrating lawful status as determined by USCIS. All documents shall be verified in the manner prescribed in § 37.13.

(h) *Exceptions Process.* A State DMV may choose to establish a written, defined exceptions process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity or date of birth. Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship.

(1) Each State establishing an exceptions process must make reasonable efforts to establish the authenticity of alternate documents each time they are presented and indicate that an exceptions process was used in the applicant's record.

(2) The State shall retain copies or images of the alternate documents accepted pursuant to § 37.31 of this part.

(3) The State shall conduct a review of the use of the exceptions process, and pursuant to subpart E of this part, prepare and submit a report with a copy of the exceptions process as part of the certification documentation detailed in § 37.55.

(i) States are not required to comply with these requirements when issuing REAL ID driver's licenses or identification cards in support of Federal, State, or local criminal justice agencies or other programs that require special licensing or identification to safeguard persons or in support of their other official duties. As directed by appropriate officials of these Federal, State, or local agencies, States should take sufficient steps to safeguard the identities of such persons. Driver's licenses and identification cards issued in support of Federal, State, or local criminal justice agencies or programs that require special licensing or identification to safeguard persons or in support of their other official duties shall not be distinguishable from other REAL ID licenses or identification cards issued by the State.

§ 37.13 Document verification requirements.

(a) States shall make reasonable efforts to ensure that the applicant does not have more than one driver's license or identification card already issued by that State under a different identity. In States where an individual is permitted to hold both a driver's license and identification card, the State shall ensure that the individual has not been issued identification documents in multiple or different names. States shall also comply with the provisions of § 37.29 before issuing a driver's license or identification card.

(b) States must verify the documents and information required under § 37.11 with the issuer of the document. States shall use systems for electronic validation of document and identity data as they become available or use alternative methods approved by DHS.

(1) States shall verify any document described in § 37.11(c) or (g) and issued by DHS (including, but not limited to, the I–94 form described in § 37.11(c)(vi)) through the Systematic Alien Verification for Entitlements (SAVE) system or alternate methods approved by DHS, except that if two DHS-issued documents are presented, a SAVE verification of one document that confirms lawful status does not need to be repeated for the second document. In the event of a non-match, the DMV must not issue a REAL ID driver's license or identification card to an applicant, and must refer the individual to U.S. Citizenship and Immigration Services for resolution.

(2) States must verify SSNs with the Social Security Administration (SSA) or through another method approved by DHS. In the event of a non-match with SSA, a State may use existing procedures to resolve non-matches. If the State is unable to resolve the non-match, and the use of an exceptions process is not warranted in the situation, the DMV must not issue a REAL ID driver's license or identification card to an applicant until the information verifies with SSA.

(3) States must verify birth certificates presented by applicants. States should use the Electronic Verification of Vital Events (EVVE) system or other electronic systems whenever the records are available. If the document does not appear authentic upon inspection or the data does not match and the use of an exceptions process is not warranted in the situation, the State must not issue a REAL ID driver's license or identification card to the applicant until the information verifies, and should refer the individual to the issuing office for resolution.

(4) States shall verify documents issued by the Department of State with the Department of State or through methods approved by DHS.

(5) States must verify REAL ID driver's licenses and identification cards with the State of issuance.

(6) Nothing in this section precludes a State from issuing an interim license or a license issued under § 37.71 that will not be accepted for official purposes to allow the individual to resolve any non-match.

§ 37.15 Physical security features for the driver's license or identification card.

(a) *General.* States must include document security features on REAL ID driver's licenses and identification cards designed to deter forgery and counterfeiting, promote an adequate level of confidence in the authenticity of cards, and facilitate detection of fraudulent cards in accordance with this section.

(1) These features must not be capable of being reproduced using technologies that are commonly used and made available to the general public.

(2) The proposed card solution must contain a well-designed, balanced set of features that are effectively combined and provide multiple layers of security. States must describe these document security features in their security plans pursuant to § 37.41.

(b) *Integrated security features.* REAL ID driver's licenses and identification cards must contain at least three levels of integrated security features that provide the maximum resistance to persons' efforts to—

(1) Counterfeit, alter, simulate, or reproduce a genuine document;

(2) Alter, delete, modify, mask, or tamper with data concerning the original or lawful card holder;

(3) Substitute or alter the original or lawful card holder's photograph and/or signature by any means; and

(4) Create a fraudulent document using components from legitimate driver's licenses or identification cards.

(c) *Security features to detect false cards.* States must employ security features to detect false cards for each of the following three levels:

(1) *Level 1.* Cursory examination, without tools or aids involving easily identifiable visual or tactile features, for rapid inspection at point of usage.

(2) *Level 2.* Examination by trained inspectors with simple equipment.

(3) *Level 3.* Inspection by forensic specialists.

(d) *Document security and integrity.* States must conduct a review of their card design and submit a report to DHS with their certification that indicates the

ability of the design to resist compromise and document fraud attempts. The report required by this paragraph is SSI and must be handled and protected in accordance with 49 CFR part 1520. Reports must be updated and submitted to DHS whenever a security feature is modified, added, or deleted. After reviewing the report, DHS may require a State to provide DHS with examination results from a recognized independent laboratory experienced with adversarial analysis of identification documents concerning one or more areas relating to the card's security.

§ 37.17 Requirements for the surface of the driver's license or identification card.

To be accepted by a Federal agency for official purposes, REAL ID driver's licenses and identification cards must include on the front of the card (unless otherwise specified below) the following information:

(a) *Full legal name.* Except as permitted in § 37.11(c)(2), the name on the face of the license or card must be the same as the name on the source document presented by the applicant to establish identity. Where the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, and NA should not be used.

(b) *Date of birth.*

(c) *Gender,* as determined by the State.

(d) *Unique Driver's license or identification card number.* This cannot be the individual's SSN, and must be unique across driver's license or identification cards within the State.

(e) *Full facial digital photograph.* A full facial photograph must be taken pursuant to the standards set forth below:

(1) States shall follow specifically ISO/IEC 19794–5:2005(E) Information technology—Biometric Data Interchange Formats—Part 5: Face Image Data. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these incorporated standards from *http://www.ansi.org*, or by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703–235–0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202–741–6030, or go to *www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

These standards include:

(i) Lighting shall be equally distributed on the face.

(ii) The face from crown to the base of the chin, and from ear-to-ear, shall be clearly visible and free of shadows.

(iii) Veils, scarves or headdresses must not obscure any facial features and not generate shadow. The person may not wear eyewear that obstructs the iris or pupil of the eyes and must not take any action to obstruct a photograph of their facial features.

(iv) Where possible, there must be no dark shadows in the eye-sockets due to the brow. The iris and pupil of the eyes shall be clearly visible.

(v) Care shall be taken to avoid ''hot spots'' (bright areas of light shining on the face).

(2) Photographs may be in black and white or color.

(f) *Address of principal residence,* except an alternative address may be displayed for:

(1) Individuals for whom a State law, regulation, or DMV procedure permits display of an alternative address, or

(2) Individuals who satisfy any of the following:

(i) If the individual is enrolled in a State address confidentiality program which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking, to keep, obtain, and use alternative addresses; and provides that the addresses of such persons must be kept confidential, or other similar program;

(ii) If the individual's address is entitled to be suppressed under State or Federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or

(iii) If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(3) In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

(g) *Signature.* (1) The card must include the signature of the card holder. The signature must meet the requirements of the March 2005 American Association of Motor Vehicle Administrators (AAMVA) standards for the 2005 AAMVA Driver's License/Identification Card Design Specifications, Annex A, section A.7.7.2. This standard includes requirements for size, scaling, cropping, color, borders, and resolution. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these standards from AAMVA on-line at *http://www.aamva.org*, or by contacting AAMVA at 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203. You may inspect a copy of these incorporated standards at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703–235–0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(2) The State shall establish alternative procedures for individuals unable to sign their name.

(h) *Physical security features,* pursuant to § 37.15 of this subpart.

(i) *Machine-readable technology on the back of the card,* pursuant to § 37.19 of this subpart.

(j) *Date of transaction.*

(k) *Expiration date.*

(l) *State or territory of issuance.*

(m) *Printed information.* The name, date of birth, gender, card number, issue date, expiration date, and address on the face of the card must be in Latin alpha-numeric characters. The name must contain a field of no less than a total of 39 characters, and longer names shall be truncated following the standard established by International Civil Aviation Organization (ICAO) 9303, ''Machine Readable Travel Documents,'' Volume 1, Part 1, Sixth Edition, 2006. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of ICAO 9303 from the ICAO, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, e-mail: *sales@icao.int*. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703–235–0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(n) The card shall bear a DHS-approved security marking on each

driver's license or identification card that is issued reflecting the card's level of compliance as set forth in § 37.51 of this Rule.

§ 37.19 Machine readable technology on the driver's license or identification card.

For the machine readable portion of the REAL ID driver's license or identification card, States must use the ISO/IEC 15438:2006(E) Information Technology—Automatic identification and data capture techniques—PDF417 symbology specification. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these incorporated standards at *http://www.ansi.org*, or by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036. You may inspect a copy of the incorporated standard at the Department of Homeland Security, 1621 Kent Street, 9th Floor, Rosslyn, VA (please call 703–235–0709 to make an appointment) or at the National Archives and Records Administration (NARA). For information on the availability of material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The PDF417 bar code standard must have the following defined minimum data elements:

(a) Expiration date.

(b) Full legal name, unless the State permits an applicant to establish a name other than the name that appears on a source document, pursuant to § 37.11(c)(2).

(c) Date of transaction.

(d) Date of birth.

(e) Gender.

(f) Address as listed on the card pursuant to § 37.17(f).

(g) Unique driver's license or identification card number.

(h) Card design revision date, indicating the most recent change or modification to the visible format of the driver's license or identification card.

(i) Inventory control number of the physical document.

(j) State or territory of issuance.

§ 37.21 Temporary or limited-term driver's licenses and identification cards.

States may only issue a temporary or limited-term REAL ID driver's license or identification card to an individual who has temporary lawful status in the United States.

(a) States must require, before issuing a temporary or limited-term driver's license or identification card to a person, valid documentary evidence, verifiable through SAVE or other DHS-approved means, that the person has lawful status in the United States.

(b) States shall not issue a temporary or limited-term driver's license or identification card pursuant to this section:

(1) For a time period longer than the expiration of the applicant's authorized stay in the United States, or, if there is no expiration date, for a period longer than one year; and

(2) For longer than the State's maximum driver's license or identification card term.

(c) States shall renew a temporary or limited-term driver's license or identification card pursuant to this section and § 37.25(b)(2), only if:

(1) the individual presents valid documentary evidence that the status by which the applicant qualified for the temporary or limited-term driver's license or identification card is still in effect, or

(2) the individual presents valid documentary evidence that he or she continues to qualify for lawful status under paragraph (a) of this section.

(d) States must verify the information presented to establish lawful status through SAVE, or another method approved by DHS.

(e) Temporary or limited-term driver's licenses and identification cards must clearly indicate on the face of the license and in the machine readable zone that the license or card is a temporary or limited-term driver's license or identification card.

§ 37.23 Reissued REAL ID driver's licenses and identification cards.

(a) *State procedure.* States must establish an effective procedure to confirm or verify an applicant's identity each time a REAL ID driver's license or identification card is reissued, to ensure that the individual receiving the reissued REAL ID driver's license or identification card is the same individual to whom the driver's license or identification card was originally issued.

(b) *Remote/Non-in-person reissuance.* Except as provided in paragraph (c) of this section a State may conduct a non-in-person (remote) reissuance if State procedures permit the reissuance to be conducted remotely. Except for the reissuance of duplicate driver's licenses and identification cards as defined in this rule, the State must reverify pursuant to § 37.13, the applicant's SSN and lawful status prior to reissuing the driver's license or identification card.

(c) *In-person reissuance.* The State may not remotely reissue a driver's license or identification card where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established through an applicant's presentation of an original source document as provided in this subpart, and must be verified as specified in § 37.13.

§ 37.25 Renewal of REAL ID driver's licenses and identification cards.

(a) *In-person renewals.* States must require holders of REAL ID driver's licenses and identification cards to renew their driver's licenses and identification cards with the State DMV in person, no less frequently than every sixteen years.

(1) The State DMV shall take an updated photograph of the applicant, no less frequently than every sixteen years.

(2) The State must reverify the renewal applicant's SSN and lawful status through SSOLV and SAVE, respectively (or other DHS-approved means) as applicable prior to renewing the driver's license or identification card. The State must also verify electronically information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so.

(3) Holders of temporary or limited-term REAL ID driver's licenses and identification cards must present evidence of continued lawful status via SAVE or other method approved by DHS when renewing their driver's license or identification card.

(b) *Remote/Non-in-person renewal.* Except as provided in (b)(2) a State may conduct a non-in-person (remote) renewal if State procedures permit the renewal to be conducted remotely.

(1) The State must reverify the applicant's SSN and lawful status pursuant to § 37.13 prior to renewing the driver's license or identification card.

(2) The State may not remotely renew a REAL ID driver's license or identification card where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established through the applicant's presentation of an original source document as provided in Subpart B, and must be verified as specified in § 37.13.

§ 37.27 Driver's licenses and identification cards issued during the age-based enrollment period.

Driver's licenses and identification cards issued to individuals prior to a DHS determination that the State is materially compliant may be renewed or reissued pursuant to current State practices, and will be accepted for

official purposes until the validity dates described in § 37.5. Effective December 1, 2014, Federal agencies will only accept REAL ID cards for official purpose from individuals under 50 as of December 1, 2014. Individuals age 50 or older on December 1, 2014, must obtain and present REAL ID cards for official purposes by December 1, 2017.

§ 37.29 Prohibition against holding more than one REAL ID card or more than one driver's license.

(a) An individual may hold only one REAL ID card. An individual cannot hold a REAL ID driver's license and a REAL ID identification card simultaneously. Nothing shall preclude an individual from holding a REAL ID card and a non-REAL ID card unless prohibited by his or her State.

(b) Prior to issuing a REAL ID driver's license,

(1) A State must check with all other States to determine if the applicant currently holds a driver's license or REAL ID identification card in another State.

(2) If the State receives confirmation that the individual holds a driver's license in another State, or possesses a REAL ID identification card in another State, the receiving State must take measures to confirm that the person has terminated or is terminating the driver's license or REAL ID identification card issued by the prior State pursuant to State law, regulation or procedure.

(c) Prior to issuing a REAL ID identification card,

(1) A State must check with all other States to determine if the applicant currently holds a REAL ID driver's license or identification card in another State.

(2) If the State receives confirmation that the individual holds a REAL ID card in another State the receiving State must take measures to confirm that the person has terminated or is terminating the REAL ID driver's license or identification card issued by the prior State pursuant to State law, regulation or procedure.

Subpart C—Other Requirements

§ 37.31 Source document retention.

(a) States must retain copies of the application, declaration and source documents presented under § 37.11 of this Part, including documents used to establish all names recorded by the DMV under § 37.11(c)(2). States shall take measures to protect any personally identifiable information collected pursuant to the REAL ID Act as described in their security plan under § 37.41(b)(2).

(1) States that choose to keep paper copies of source documents must retain the copies for a minimum of seven years.

(2) States that choose to transfer information from paper copies to microfiche must retain the microfiche for a minimum of ten years.

(3) States that choose to keep digital images of source documents must retain the images for a minimum of ten years.

(4) States are not required to retain the declaration with application and source documents, but must retain the declaration consistent with applicable State document retention requirements and retention periods.

(b) States using digital imaging to retain source documents must store the images as follows:

(1) Photo images must be stored in the Joint Photographic Experts Group (JPEG) 2000 standard for image compression, or a standard that is interoperable with the JPEG standard. Images must be stored in an open (consensus) format, without proprietary wrappers, to ensure States can effectively use the image captures of other States as needed.

(2) Document and signature images must be stored in a compressed Tagged Image Format (TIF), or a standard that is interoperable with the TIF standard.

(3) All images must be retrievable by the DMV if properly requested by law enforcement.

(c) Upon request by an applicant, a State shall record and retain the applicant's name, date of birth, certificate numbers, date filed, and issuing agency in lieu of an image or copy of the applicant's birth certificate, where such procedures are required by State law.

§ 37.33 DMV databases.

(a) States must maintain a State motor vehicle database that contains, at a minimum—

(1) All data fields printed on driver's licenses and identification cards issued by the State, individual serial numbers of the card, and SSN;

(2) A record of the full legal name and recorded name established under § 37.11(c)(2) as applicable, without truncation;

(3) All additional data fields included in the MRZ but not printed on the driver's license or identification card; and

(4) Motor vehicle driver's histories, including motor vehicle violations, suspensions, and points on driver's licenses.

(b) States must protect the security of personally identifiable information, collected pursuant to the REAL ID Act, in accordance with § 37.41(b)(2) of this part.

Subpart D—Security at DMVs and Driver's License and Identification Card Production Facilities

§ 37.41 Security plan.

(a) *In General.* States must have a security plan that addresses the provisions in paragraph (b) of this section and must submit the security plan as part of its REAL ID certification under § 37.55.

(b) Security plan contents. At a minimum, the security plan must address—

(1) Physical security for the following:

(i) Facilities used to produce driver's licenses and identification cards.

(ii) Storage areas for card stock and other materials used in card production.

(2) Security of personally identifiable information maintained at DMV locations involved in the enrollment, issuance, manufacture and/or production of cards issued under the REAL ID Act, including, but not limited to, providing the following protections:

(i) Reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information collected, stored, and maintained in DMV records and information systems for purposes of complying with the REAL ID Act. These safeguards must include procedures to prevent unauthorized access, use, or dissemination of applicant information and images of source documents retained pursuant to the Act and standards and procedures for document retention and destruction.

(ii) A privacy policy regarding the personally identifiable information collected and maintained by the DMV pursuant to the REAL ID Act.

(iii) Any release or use of personal information collected and maintained by the DMV pursuant to the REAL ID Act must comply with the requirements of the Driver's Privacy Protection Act, 18 U.S.C. 2721 *et seq.* State plans may go beyond these minimum privacy requirements to provide greater protection, and such protections are not subject to review by DHS for purposes of determining compliance with this Part.

(3) Document and physical security features for the card, consistent with the requirements of § 37.15, including a description of the State's use of biometrics, and the technical standard utilized, if any;

(4) Access control, including the following:

(i) Employee identification and credentialing, including access badges.

(ii) Employee background checks, in accordance with § 37.45 of this part.

(iii) Controlled access systems.

(5) Periodic training requirements in—

(i) Fraudulent document recognition training for all covered employees handling source documents or engaged in the issuance of driver's licenses and identification cards. The fraudulent document training program approved by AAMVA or other DHS approved method satisfies the requirement of this subsection.

(ii) Security awareness training, including threat identification and handling of SSI as necessary.

(6) Emergency/incident response plan;

(7) Internal audit controls;

(8) An affirmation that the State possesses both the authority and the means to produce, revise, expunge, and protect the confidentiality of REAL ID driver's licenses or identification cards issued in support of Federal, State, or local criminal justice agencies or similar programs that require special licensing or identification to safeguard persons or support their official duties. These procedures must be designed in coordination with the key requesting authorities to ensure that the procedures are effective and to prevent conflicting or inconsistent requests. In order to safeguard the identities of individuals, these procedures should not be discussed in the plan and States should make every effort to prevent disclosure to those without a need to know about either this confidential procedure or any substantive information that may compromise the confidentiality of these operations. The appropriate law enforcement official and United States Attorney should be notified of any action seeking information that could compromise Federal law enforcement interests.

(c) *Handling of Security Plan.* The Security Plan required by this section contains Sensitive Security Information (SSI) and must be handled and protected in accordance with 49 CFR Part 1520.

§ 37.43 Physical security of DMV production facilities.

(a) States must ensure the physical security of facilities where driver's licenses and identification cards are produced, and the security of document materials and papers from which driver's licenses and identification cards are produced or manufactured.

(b) States must describe the security of DMV facilities as part of their security plan, in accordance with § 37.41.

§ 37.45 Background checks for covered employees.

(a) *Scope.* States are required to subject persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, or who have the ability to affect the identity information that appears on the driver's license or identification card, or current employees who will be assigned to such positions (''covered employees'' or ''covered positions''), to a background check. The background check must include, at a minimum, the validation of references from prior employment, a name-based and fingerprint-based criminal history records check, and employment eligibility verification otherwise required by law. States shall describe their background check process as part of their security plan, in accordance with § 37.41(b)(4)(ii). This section also applies to contractors utilized in covered positions.

(b) *Background checks.* States must ensure that any covered employee under paragraph (a) of this section is provided notice that he or she must undergo a background check and the contents of that check.

(1) *Criminal history records check.* States must conduct a name-based and fingerprint-based criminal history records check (CHRC) using, at a minimum, the FBI's National Crime Information Center (NCIC) and the Integrated Automated Fingerprint Identification (IAFIS) database and State repository records on each covered employee identified in paragraph (a) of this section, and determine if the covered employee has been convicted of any of the following disqualifying crimes:

(i) *Permanent disqualifying criminal offenses.* A covered employee has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, of any of the felonies set forth in 49 CFR 1572.103(a).

(ii) *Interim disqualifying criminal offenses.* The criminal offenses referenced in 49 CFR 1572.103(b) are disqualifying if the covered employee was either convicted of those offenses in a civilian or military jurisdiction, or admits having committed acts which constitute the essential elements of any of those criminal offenses within the seven years preceding the date of employment in the covered position; or the covered employee was released from incarceration for the crime within the five years preceding the date of employment in the covered position.

(iii) *Under want or warrant.* A covered employee who is wanted or under indictment in any civilian or military jurisdiction for a felony referenced in this section is disqualified until the want or warrant is released.

(iv) *Determination of arrest status.* When a fingerprint-based check discloses an arrest for a disqualifying crime referenced in this section without indicating a disposition, the State must determine the disposition of the arrest.

(v) *Waiver.* The State may establish procedures to allow for a waiver of the requirements of paragraphs (b)(1)(ii) or (b)(1)(iv) of this section under circumstances determined by the State. These procedures can cover circumstances where the covered employee has been arrested, but no final disposition of the matter has been reached.

(2) *Employment eligibility status verification.* The State shall ensure it is fully in compliance with the requirements of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) with respect to each covered employee. The State is encouraged to participate in the USCIS E-Verify program (or any successor program) for employment eligibility verification.

(3) *Reference check.* Reference checks from prior employers are not required if the individual has been employed by the DMV for at least two consecutive years since May 11, 2006.

(4) *Disqualification.* If results of the State's CHRC reveal a permanent disqualifying criminal offense under paragraph (b)(1)(i) or an interim disqualifying criminal offense under paragraph (b)(1)(ii), the covered employee may not be employed in a position described in paragraph (a) of this section. An employee whose employment eligibility has not been verified as required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A) may not be employed in any position.

(c) *Appeal.* If a State determines that the results from the CHRC do not meet the standards of such check the State must so inform the employee of the determination to allow the individual an opportunity to appeal to the State or Federal government, as applicable.

(d) Background checks substantially similar to the requirements of this section that were conducted on existing employees on or after May 11, 2006 need not be re-conducted.

Subpart E—Procedures for Determining State Compliance

§ 37.51 Compliance—general requirements.

(a) *Full compliance.* To be in full compliance with the REAL ID Act of 2005, 49 U.S.C. 30301 note, States must meet the standards of subparts A through D or have a REAL ID program that DHS has determined to be comparable to the standards of subparts A through D. States certifying compliance with the REAL ID Act must follow the certification requirements described in § 37.55. States must be fully compliant with Subparts A through D on or before May 11, 2011. States must file the documentation required under § 37.55 at least 90 days prior to the effective date of full compliance.

(b) *Material compliance.* States must be in material compliance by January 1, 2010 to receive an additional extension until no later than May 10, 2011 as described in § 37.63. Benchmarks for material compliance are detailed in the Material Compliance Checklist found in DHS' Web site at *http://www.dhs.gov*.

§ 37.55 State certification documentation.

(a) States seeking DHS's determination that its program for issuing REAL ID driver's licenses and identification cards is meeting the requirements of this part (full compliance), must provide DHS with the following documents:

(1) A certification by the highest level Executive official in the State overseeing the DMV reading as follows:

''I, [name and title (name of certifying official), (position title) of the State (Commonwealth))] of _____, do hereby certify that the State (Commonwealth) has implemented a program for issuing driver's licenses and identification cards in compliance with the requirements of the REAL ID Act of 2005, as further defined in 6 CFR part 37, and intends to remain in compliance with these regulations.''

(2) A letter from the Attorney General of the State confirming that the State has the legal authority to impose requirements necessary to meet the standards established by this part.

(3) A description of the State's exceptions process under § 37.11(h), and the State's waiver processes under § 37.45(b)(1)(v).

(4) The State's Security Plan under § 37.41.

(b) After DHS's final compliance determination, States shall recertify compliance with this Part every three years on a rolling basis as determined by DHS.

§ 37.59 DHS reviews of State compliance.

State REAL ID programs will be subject to DHS review to determine whether the State meets the requirements for compliance with this part.

(a) *General inspection authority.* States must cooperate with DHS's review of the State's compliance at any time. In addition, the State must:

(1) Provide any reasonable information pertinent to determining compliance with this part as requested by DHS;

(2) Permit DHS to conduct inspections of any and all sites associated with the enrollment of applicants and the production, manufacture, personalization and issuance of driver's licenses or identification cards; and

(3) Allow DHS to conduct interviews of the State's employees and contractors who are involved in the application and verification process, or the manufacture and production of driver's licenses or identification cards. DHS shall provide written notice to the State in advance of an inspection visit.

(b) *Preliminary DHS determination.* DHS shall review forms, conduct audits of States as necessary, and make a preliminary determination on whether the State has satisfied the requirements of this part within 45 days of receipt of the Material Compliance Checklist or State certification documentation of full compliance pursuant to § 37.55.

(1) If DHS determines that the State meets the benchmarks of the Material Compliance Checklist, DHS may grant the State an additional extension until no later than May 10, 2011.

(2) If DHS determines that the State meets the full requirements of subparts A through E, the Secretary shall make a final determination that the State is in compliance with the REAL ID Act.

(c) *State reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented, or intends to implement, to correct any deficiencies cited in the preliminary determination or, alternatively, detail why the DHS preliminary determination is incorrect. Upon request by the State, an informal conference will be scheduled during this time.

(d) *Final DHS determination.* DHS will notify States of its final determination of State compliance with this Part, within 45 days of receipt of a State reply.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

§ 37.61 Results of compliance determination.

(a) A State shall be deemed in compliance with this part when DHS issues a determination that the State meets the requirements of this part.

(b) The Secretary will determine that a State is not in compliance with this part when it—

(1) Fails to submit a timely certification or request an extension as prescribed in this subpart; or

(2) Does not meet one or more of the standards of this part, as established in a determination by DHS under § 37.59.

§ 37.63 Extension of deadline.

(a) A State may request an initial extension by filing a request with the Secretary no later than March 31, 2008. In the absence of extraordinary circumstances, such an extension request will be deemed justified for a period lasting until, but not beyond, December 31, 2009. DHS shall notify a State of its acceptance of the State's request for initial extension within 45 days of receipt.

(b) States granted an initial extension may file a request for an additional extension until no later than May 10, 2011, by submitting a Material Compliance Checklist demonstrating material compliance, per § 37.51(b) with certain elements of subparts A through E as defined by DHS. Such additional extension request must be filed by October 11, 2009. DHS shall notify a State whether an additional extension has been granted within 45 days of receipt of the request and documents described above.

(c) Subsequent extensions, if any, will be at the discretion of the Secretary.

§ 37.65 Effect of failure to comply with this Part.

(a) Any driver's license or identification card issued by a State that DHS determines is not in compliance with this part is not acceptable as identification by Federal agencies for official purposes.

(b) Driver's licenses and identification cards issued by a State that has obtained an extension of the compliance date from DHS per § 37.51 are acceptable for official purposes until the end of the applicable enrollment period under § 37.5; or the State subsequently is found by DHS under this Subpart to not be in compliance.

(c) Driver's licenses and identification cards issued by a State that has been determined by DHS to be in material compliance and that are marked to identify that the licenses and cards are materially compliant will continue to be accepted by Federal agencies after the

expiration of the enrollment period under § 37.5, until the expiration date on the face of the document.

Subpart F—Driver's Licenses and Identification Cards Issued Under Section 202(d)(11) of the REAL ID Act

§ 37.71 Driver's licenses and identification cards issued under section 202(d)(11) of the REAL ID Act.

(a) Except as authorized in § 37.27, States that DHS determines are compliant with the REAL ID Act that choose to also issue driver's licenses and identification cards that are not acceptable by Federal agencies for official purposes must ensure that such driver's licenses and identification cards—

(1) Clearly state on their face and in the machine readable zone that the card is not acceptable for official purposes; and

(2) Have a unique design or color indicator that clearly distinguishes them from driver's licenses and identification cards that meet the standards of this part.

(b) DHS reserves the right to approve such designations, as necessary, during certification of compliance.

* * * * *

Issued in Washington, DC, on January 10, 2008.

Michael Chertoff,

Secretary.

[FR Doc. 08–140 Filed 1–28–08; 8:45 am]

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January 29, 2008

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2009: Proposed Annual Payment Rate Updates, Policy Changes, and Clarifications; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1393–P]

RIN 0938–AO94

Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2009: Proposed Annual Payment Rate Updates, Policy Changes, and Clarifications

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the annual payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs). In addition, we are proposing to consolidate the annual July 1 update for payment rates and the October 1 update for Medicare severity long-term care diagnosis related group (MS–LTC–DRG) weights to a single fiscal year (FY) update.

In this proposed rule, we are also clarifying various policy issues.

This proposed rule would also describe our evaluation of the possible one-time adjustment to the Federal payment rate.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 24, 2008.

ADDRESSES: In commenting, please refer to file code CMS–1393–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov/.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comment.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1393–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1393–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Tzvi Hefter, (410) 786–4487 (General information).

Judy Richter, (410) 786–2590 (General information, payment adjustments for special cases, onsite discharges and readmissions, interrupted stays, co-located providers, and short-stay outliers).

Michele Hudson, (410) 786–5490 (Calculation of the payment rates, MS–LTC–DRGs, relative weights and case-mix index, market basket, wage index, budget neutrality, and other payment adjustments).

Ann Fagan, (410) 786–5662 (Patient classification system).

Linda McKenna, (410) 786–4537 (Payment adjustments and interrupted stay).

Elizabeth Truong, (410) 786–6005 (Federal rate update, budget neutrality, other adjustments, and calculation of the payment rates).

Michael Treitel, (410) 786–4552 (High cost outliers and cost-to-charge ratios).

Table of Contents

I. Background
- A. Legislative and Regulatory Authority
- B. Criteria for Classification as a LTCH
- 1. Classification as a LTCH
- 2. Hospitals Excluded From the LTCH PPS
- C. Transition Period for Implementation of the LTCH PPS
- D. Limitation on Charges to Beneficiaries
- E. Administrative Simplification Compliance Act (ASCA) and Health Insurance Portability and Accountability Act (HIPAA) Compliance

II. Summary of the Provisions of This Proposed Rule

III. Medicare Severity Long-Term Care Diagnosis-Related Group (LTC–DRG) Classifications and Relative Weights
- A. Background
- B. Patient Classifications into MS–LTC–DRGs
- C. Organization of MS–LTC–DRGs
- D. Method for Updating the MS–LTC–DRG Classifications and Relative Weights
- 1. Background
- 2. FY 2008 MS–LTC–DRG Relative Weights

IV. Proposed Changes to the LTCH PPS Payment Rates and other Proposed Changes for the 2009 LTCH PPS Rate Year
- A. Overview of the Development of the Payment Rates
- B. Proposed Consolidation of the Annual Updates for Payment and MS–LTC–DRG Weights to One Annual Update
- C. LTCH PPS Market Basket
- 1. Overview of the RPL Market Basket
- 2. Market Basket Estimate for the 2009 LTCH PPS Rate Year
- D. Discussion of a One-time Prospective Adjustment to the Standard Federal Rate
- E. Proposed Standard Federal Rate for the 2009 LTCH PPS Rate Year
- 1. Background
- 2. Proposed Standard Federal Rate for the 2009 LTCH PPS Rate Year
- F. Calculation of Proposed LTCH Prospective Payments for the 2009 LTCH PPS Rate Year
- 1. Proposed Adjustment for Area Wage Levels
- a. Background
- b. Proposed Updates to the Geographic Classifications/Labor Market Area Definitions
- (1) Background
- (2) Proposed Update to the CBSA-based Labor Market Area Definitions
- (3) New England Deemed Counties
- (4) Proposed Codification of the Definitions of urban and rural under 42 CFR Part 412, subpart O
- c. Proposed Labor-Related Share
- d. Proposed Wage Index Data
- 2. Proposed Adjustment for Cost-of-Living in Alaska and Hawaii

3. Proposed Adjustment for High-Cost Outliers (HCOs)
a. Background
b. Cost-to-Charge Ratios (CCRs)
c. Establishment of the Fixed-Loss Amount
d. Application of Outlier Policy to Short-Stay Outlier (SSO) Cases
4. Other Proposed Payment Adjustments
5. Technical Correction to the Budget Neutrality Requirement at § 412.523(d)(2)
G. Proposed Conforming Changes
V. Computing the Proposed Adjusted Federal Prospective Payments for the 2009 LTCH PPS Rate Year
VI. Monitoring
VII. Method of Payment
VIII. RTIs Research
IX. Collection of Information Requirements
X. Regulatory Impact Analysis
A. Introduction
1. Executive Order 12866
2. Regulatory Flexibility Act (RFA)
3. Impact on Rural Hospitals
4. Unfunded Mandates
5. Federalism
6. Alternatives Considered
B. Anticipated Effects of Proposed Payment Rate Changes
1. Budgetary Impact
2. Impact on Providers
3. Calculation of Prospective Payments
4. Results
a. Location
b. Participation Date
c. Ownership Control
d. Census Region
e. Bed size
5. Effects on the Medicare Program
6. Effects on Medicare Beneficiaries
C. Accounting Statement
Regulations Text
Addendum
Table 1: Proposed Long-Term Care Hospital Wage Index for Urban Areas for Discharges Occurring from July 1, 2008 through September 30, 2009.
Table 2: Proposed Long-Term Care Hospital Wage Index for Rural Areas for Discharges Occurring from July 1, 2008 through September 30, 2009.
Table 3: FY 2008 MS–LTC–DRG Relative Weights, Geometric Average Length of Stay, Short-Stay Outlier Threshold and IPPS-Comparable Threshold (for Short-Stay Outlier Cases).

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

3M 3M Health Information System
AHA American Hospital Association
AHIMA American Health Information Management Association
ALOS Average length of stay
ALTHA Acute Long Term Hospital Association
ASCA Administrative Simplification Compliance Act of 2002 (Pub. L. 107–105)
BBA Balanced Budget Act of 1997 (Pub. L. 105–33)
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113)
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554)
BLS Bureau of Labor Statistics
BN Budget neutrality
CBSA Core-based statistical area
CC Complications and comorbidities
CCR Cost-to-charge ratio
C&M Coordination and maintenance
CMI Case-mix index
CMS Centers for Medicare & Medicaid Services
COLA Cost of living adjustment
COP Condition of participation
CPI Consumer Price Index
CY Calendar year
DSH Disproportionate share of low–income patients
DRGs Diagnosis–related groups
ECI Employment Cost Index
FI Fiscal intermediary
FY Fiscal year
FFY Federal fiscal year
HCO High-cost outlier
HCRIS Hospital cost report information system
HHA Home health agency
HHS (Department of) Health and Human Services
HIPAA Health Insurance Portability and Accountability Act (Pub. L. 104–191)
HIPC Health Information Policy Council
HwHs Hospitals within hospitals
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification (codes)
IME Indirect medical education
I–O Input-Output
IPF Inpatient psychiatric facility
IPPS [Acute Care Hospital] Inpatient Prospective Payment System
IRF Inpatient rehabilitation facility
LOS Length of stay
LTC-DRG Long-term care diagnosis-related group
LTCH Long-term care hospital
MAC Medicare Administrative Contractor
MCE Medicare code editor
MDC Major diagnostic categories
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare provider analysis and review
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173)
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub. L. 110–173)
MSA Metropolitan statistical area
MS–DRG Medicare severity diagnosis-related group
MS–LTC–DRG Medicare severity long-term care diagnosis-related group
NAICS North American Industrial Classification System
NALTH National Association of Long Term Hospitals
NCHS National Center for Health Statistics
OACT [CMS'] Office of the Actuary
OBRA 86 Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509)
OMB Office of Management and Budget
OPM U.S. Office of Personnel Management
O.R. Operating room
OSCAR Online Survey Certification and Reporting (System)
PIP Periodic interim payment
PLI Professional liability insurance
PMSA Primary metropolitan statistical area
PPI Producer Price Indexes
PPS Prospective payment system
PSF Provider specific file
QIO Quality Improvement Organization (formerly Peer Review organization (PRO))
RIA Regulatory impact analysis
RPL Rehabilitation psychiatric long-term care (hospital)
RTI Research Triangle Institute, International
RY Rate year (begins July 1 and ends June 30)
SIC Standard industrial code
SNF Skilled nursing facility
SSO Short-stay outlier
TEFRA Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)
TEP Technical expert panel
UHDDS Uniform hospital discharge data set

I. Background

A. Legislative and Regulatory Authority

Section 123 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) as amended by section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) provides for payment for both the operating and capital-related costs of hospital inpatient stays in long-term care hospitals (LTCHs) under Medicare Part A based on prospectively set rates. The Medicare prospective payment system (PPS) for LTCHs applies to hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act), effective for cost reporting periods beginning on or after October 1, 2002.

Section 1886(d)(1)(B)(iv)(I) of the Act defines a LTCH as ''a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Section 1886(d)(1)(B)(iv)(II) of the Act also provides an alternative definition of LTCHs: Specifically, a hospital that first received payment under section 1886(d) of the Act in 1986 and has an average inpatient length of stay (LOS) (as determined by the Secretary of Health and Human Services (the Secretary)) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in fiscal year (FY) 1997.

Section 123 of the BBRA requires the PPS for LTCHs to be a ''per discharge''

system with a diagnosis-related group (DRG) based patient classification system that reflects the differences in patient resources and costs in LTCHs.

Section 307(b)(1) of the BIPA, among other things, mandates that the Secretary shall examine, and may provide for, adjustments to payments under the LTCH PPS, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In the August 30, 2002 **Federal Register**, we issued a final rule that implemented the LTCH PPS authorized under BBRA and BIPA (67 FR 55954). This system uses information from LTCH patient records to classify patients into distinct MS-long-term care diagnosis-related groups (MS-LTC-DRGs) based on clinical characteristics and expected resource needs. Payments are calculated for each MS-LTC-DRG and provisions are made for appropriate payment adjustments. Payment rates under the LTCH PPS are updated annually and published in the **Federal Register**.

The LTCH PPS replaced the reasonable cost-based payment system under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) for payments for inpatient services provided by a LTCH with a cost reporting period beginning on or after October 1, 2002. (The regulations implementing the TEFRA reasonable cost-based payment provisions are located at 42 CFR part 413.) With the implementation of the PPS for acute care hospitals authorized by the Social Security Amendments of 1983 (Pub. L. 98–21), which added section 1886(d) to the Act, certain hospitals, including LTCHs, were excluded from the PPS for acute care hospitals and were paid their reasonable costs for inpatient services subject to a per discharge limitation or target amount under the TEFRA system. For each cost reporting period, a hospital-specific ceiling on payments was determined by multiplying the hospital's updated target amount by the number of total current year Medicare discharges. (Generally, in this document when we refer to discharges, the intent is to describe Medicare discharges.) The August 30, 2002 final rule further details the payment policy under the TEFRA system (67 FR 55954).

In the August 30, 2002 final rule, we also presented an in-depth discussion of the LTCH PPS, including the patient classification system, relative weights, payment rates, additional payments, and the BN requirements mandated by section 123 of the BBRA. The same final rule that established regulations for the LTCH PPS under 42 CFR part 412, subpart O, also contained LTCH provisions related to covered inpatient services, limitation on charges to beneficiaries, medical review requirements, furnishing of inpatient hospital services directly or under arrangement, and reporting and recordkeeping requirements. We refer readers to the August 30, 2002 final rule for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS (67 FR 55954).

In the June 6, 2003 **Federal Register**, we published a final rule that set forth the FY 2004 annual update of the payment rates for the Medicare PPS for inpatient hospital services furnished by LTCHs (68 FR 34122). It also changed the annual period for which the payment rates are effective. The annual updated rates are now effective from July 1 through June 30 instead of from October 1 through September 30. We refer to the July through June time period as a ''long-term care hospital rate year'' (LTCH PPS rate year). In addition, we changed the publication schedule for the annual update to allow for an effective date of July 1. The payment amounts and factors used to determine the annual update of the LTCH PPS Federal rate are based on a LTCH PPS rate year. While the LTCH payment rate update is effective July 1, the annual update of the DRG classifications and relative weights for LTCHs are linked to the annual adjustments of the acute care hospital inpatient DRGs and are effective each October 1.

In the Prospective Payment System for Long-Term Care Hospitals RY 2007: Annual Payment Rate Updates, Policy Changes, and Clarifications final rule (71 FR 27798) (hereinafter referred to as the RY 2007 LTCH PPS final rule), we set forth the 2007 LTCH PPS rate year annual update of the payment rates for the Medicare PPS for inpatient hospital services provided by LTCHs. We also adopted the ''Rehabilitation, Psychiatric, Long-Term Care (RPL)'' market basket under the LTCH PPS in place of the excluded hospital with capital market basket. In addition, we implemented a zero percent update to the LTCH PPS Federal rate for RY 2007. We also revised the existing payment adjustment for short stay outlier (SSO) cases by reducing part of the existing payment formula and adding a fourth component to that payment formula. We also sunsetted the surgical DRG exception to the payment policy established under the 3-day or less interruption of stay policy. Finally, we clarified the policy at § 412.534(c) for adjusting the LTCH PPS payment so that the LTCH PPS payment is equivalent to what would otherwise be payable under § 412.1(a).

The Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) (Pub.L. 110–173) was enacted on December 29, 2007 and has various effects on the LTCH PPS. The new law's provisions also have varying time frames of applicability. First, we note that certain provisions of the MMSEA provided that Secretary shall not apply, for cost reporting periods beginning on or after the date of the enactment of the Act (December 29, 2007) for a 3-year period: the extension of payment adjustments at § 412.534 to ''grandfathered LTCHs'' (a long term care hospital identified by the amendment made by section 4417(a) of Pub. L. 105–33); and the payment adjustment at § 412.536 to ''freestanding'' LTCHs. In addition, the new law provides that the Secretary shall not apply, for the 3-year period beginning on the date of enactment of the Act the revision to the SSO policy at § 412.529(c)(3)(i) that was finalized in 72 FR 26904 and 26992 and the one-time adjustment to the payment rates provided for in § 412.523(d)(3). The statute also provides that the base rate for RY 2008 be the same as the base rate for RY 2007 (the revised base rate, however, does not apply to discharges occurring on or after July 1, 2007 and before April 1, 2008); for a 3-year moratorium (with specified exceptions) on the establishment of new LTCHs, LTCH satellites, and on the increase in the number of LTCH beds. The new law also revises in the threshold percentages for certain co-located LTCHs and LTCH satellites governed under § 412.534. Finally, the Act provides for an expanded review of medical necessity for admission and continued stay at LTCHs. In this proposed rule we are proposing to establish the applicable Federal rates for RY 2009 consistent with section 1886(m)(2) of the Act as amended by MMSEA. We are also proposing to amend our regulations at § 412.523(d)(3) to change the methodology for the one-time budget neutrality adjustment and to comply with section 114(c)(4) of Pub. L. 110–173. We intend to address all other policy revisions necessitated by the statutory changes of the new law in the future.

B. Criteria for Classification as a LTCH

1. Classification as a LTCH

Under the existing regulations at § 412.23(e)(1) and (e)(2)(i), which implement section 1886(d)(1)(B)(iv)(I) of the Act, to qualify to be paid under the

LTCH PPS, a hospital must have a provider agreement with Medicare and must have an average Medicare inpatient LOS of greater than 25 days. Alternatively, § 412.23(e)(2)(ii) states that for cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the PPS in 1986 and can demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease must have an average inpatient LOS for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days.

Section 412.23(e)(3) provides that, subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average Medicare inpatient LOS, specified under § 412.23(e)(2)(i) is calculated by dividing the total number of covered and noncovered days of stay for Medicare inpatients (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period. Section 412.23 also provides that subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average inpatient LOS specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.

In the RY 2005 LTCH PPS final rule (69 FR 25674), we specified the procedure for calculating a hospital's inpatient average length of stay (ALOS) for purposes of classification as a LTCH. That is, if a patient's stay includes days of care furnished during two or more separate consecutive cost reporting periods, the total days of a patient's stay would be reported in the cost reporting period during which the patient is discharged (69 FR 25705). Therefore, we revised § 412.23(e)(3)(ii) to specify that, effective for cost reporting periods beginning on or after July 1, 2004, in calculating a hospital's ALOS, if the days of an inpatient stay involve days of care furnished during two or more separate consecutive cost reporting periods, the total number of days of the stay are considered to have occurred in the cost reporting period during which the inpatient was discharged.

Fiscal intermediaries (FIs) verify that LTCHs meet the ALOS requirements. We note that the inpatient days of a patient who is admitted to a LTCH without any remaining Medicare days of coverage, regardless of the fact that the patient is a Medicare beneficiary, will not be included in the above calculation. Because Medicare would not be paying for any of the patient's treatment, data on the patient's stay would not be included in the Medicare claims processing systems. In order for both covered and noncovered days of a LTCH hospitalization to be included, a patient admitted to the LTCH must have at least 1 remaining benefit day (68 FR 34123).

The FI's determination of whether or not a hospital qualifies as an LTCH is based on the hospital's discharge data from the hospital's most recent complete cost reporting period as specified in § 412.23(e)(3) and is effective at the start of the hospital's next cost reporting period as specified in § 412.22(d). However, if the hospital does not meet the ALOS requirement as specified in § 412.23(e)(2)(i) or (ii), the hospital may provide the FI with data indicating a change in the ALOS by the same method for the period of at least 5 months of the immediately preceding 6-month period (69 FR 25676). Our interpretation of § 412.23(e)(3) was to allow hospitals to submit data using a period of at least 5 months of the most recent data from the immediately preceding 6-month period.

As we stated in the FY 2004 Hospital Inpatient Prospective Payment System (IPPS) final rule, published in the August 1, 2003 **Federal Register**, prior to the implementation of the LTCH PPS, we did rely on data from the most recently submitted cost report for purposes of calculating the ALOS (68 FR 45464). The calculation to determine whether an acute care hospital qualifies for LTCH status was based on total days and discharges for LTCH inpatients. However, with the implementation of the LTCH PPS, for the ALOS specified under § 412.23(e)(2)(i), we revised § 412.23(e)(3)(i) to only count total days and discharges for Medicare inpatients (67 FR 55970 through 55974). In addition, the ALOS specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period. As we discussed in the FY 2004 IPPS final rule, we are unable to capture the necessary data from our existing cost reporting forms (68 FR 45464). Therefore, we notified FIs and LTCHs that until the cost reporting forms are revised, for purposes of calculating the ALOS, we will be relying upon census data extracted from Medicare Provider Analysis and Review (MedPAR) files that reflect each LTCH's cost reporting period (68 FR 45464). Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iv).

2. Hospitals Excluded From the LTCH PPS

The following hospitals are paid under special payment provisions, as described in § 412.22(c), and therefore, are not subject to the LTCH PPS rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90–248) (42 U.S.C. 1395b–1) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603) (42 U.S.C. 1395b–1 (note)) (Statewide all-payer systems, subject to the rate-of-increase test at section 1814(b) of the Act).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

C. Transition Period for Implementation of the LTCH PPS

In the August 30, 2002 final rule (67 FR 55954), we provided for a 5-year transition period. During this 5-year transition period, a LTCH's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decrease in the percentage of the LTCH PPS payment that is based on reasonable cost concepts. However, effective for cost reporting periods beginning on or after October 1, 2006, total LTCH PPS payments are based on 100 percent of the Federal rate.

D. Limitation on Charges to Beneficiaries

In the August 30, 2002 final rule, we presented an in-depth discussion of beneficiary liability under the LTCH PPS (67 FR 55974 through 55975). In the RY 2005 LTCH PPS final rule (69 FR 25676), we clarified that the discussion of beneficiary liability in the August 30, 2002 final rule was not meant to establish rates or payments for, or define Medicare-eligible expenses. Under § 412.507, if the Medicare payment to the LTCH is the full LTC–DRG payment amount, as consistent with other established hospital prospective payment systems, a LTCH may not bill a Medicare beneficiary for more than the deductible and coinsurance amounts as

specified under § 409.82, § 409.83, and § 409.87 and for items and services as specified under § 489.30(a). However, under the LTCH PPS, Medicare will only pay for days for which the beneficiary has coverage until the SSO threshold is exceeded. Therefore, if the Medicare payment was for a SSO case (§ 412.529) that was less than the full LTC–DRG payment amount because the beneficiary had insufficient remaining Medicare days, the LTCH could also charge the beneficiary for services delivered on those uncovered days (§ 412.507).

E. Administrative Simplification Compliance Act (ASCA) and Health Insurance Portability and Accountability Act (HIPAA) Compliance

Claims submitted to Medicare must comply with both the Administrative Simplification Compliance Act (ASCA) (Pub. L. 107–105), and Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191). Section 3 of the ASCA requires that the Medicare Program deny payment under Part A or Part B for any expenses incurred for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Section 1862(h) of the Act (as added by section 3(a) of the ASCA) provides that the Secretary shall waive such denial in two specific types of cases and may also waive such denial ''in such unusual cases as the Secretary finds appropriate'' (68 FR 48805). Section 3 of the ASCA operates in the context of the HIPAA regulations, which include, among other provisions, the transactions and code sets standards requirements codified as 45 CFR parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered health care providers, to conduct certain electronic healthcare transactions according to the applicable transactions and code sets standards.

II. Summary of the Provisions of This Proposed Rule

In this proposed rule, we propose to revise the LTCH PPS payment rate update cycle and make other policy changes and clarifications. The following is a summary of the major areas that we are addressing in this proposed rule.

In section III. of this proposed rule, we discuss the LTCH PPS patient classification and the relative weights which are linked to the annual adjustments of the acute care hospital inpatient DRG system, and are based on the annual revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes effective each October 1. In this section, we also summarize the severity adjusted MS–LTC–DRGs and the development of the relative weights for FY 2008 as established in the FY 2008 IPPS final rule with comment period.

In section IV.B. of this proposed rule, we are proposing to extend the rate year cycle for RY 2009 to a 15-month period, from July 1, 2008 through September 30, 2009. We would continue to have an update to the MS–LTC–DRG classifications and weights effective for October 1, 2008. We are proposing to have one consolidated annual update to both the rates and the classifications and weights beginning October 1, 2009.

As discussed in section IV.E.2. of this proposed rule, we are proposing a 3.5 percent market basket update to the LTCH PPS Federal rate for the 2009 LTCH PPS rate year based on the most recent market basket estimate for the proposed 15-month 2009 LTCH PPS rate year. Also in section IV. of this proposed rule, we discuss the prospective payment rate for RY 2009.

In section IV. D. of this proposed rule, we discuss the possible one-time adjustment to the Federal payment rate under § 412.523(d)(3). Consistent with section 114(c)(4) of Public Law 110–173, we are not proposing any adjustment under § 412.523(d)(3). However, at this time, we are proposing to make a change to the methodology and changes reflecting the requirements of section 114(c)(4) of Public Law 110–173 to the regulatory text.

In section VI. of this proposed rule, we discuss the proposed updates to the payment rates, including the proposed revisions to the wage index, the labor-related share, the cost-of-living adjustment (COLA) factors, and the outlier threshold, for the 2009 LTCH PPS rate year.

In section IX. of this proposed rule, we discuss our on-going monitoring protocols under the LTCH PPS.

In section X. of this proposed rule, we present an update of Research Triangle Institute's (RTI) analysis relating to the development of LTCH patient- and facility-level criteria.

In section XII. of this proposed rule, we analyze the impact of the proposed changes presented in this proposed rule on Medicare expenditures, Medicare-participating LTCHs, and Medicare beneficiaries.

III. Medicare Severity Long-Term Care Diagnosis-Related Group (MS–LTC–DRG) Classifications and Relative Weights

[If you choose to comment on issues in this section, please include the caption ''MS–LTC–DRG CLASSIFICATIONS AND RELATIVE WEIGHTS'' at the beginning of your comments.]

A. Background

Section 123 of the BBRA requires that the Secretary implement a PPS for LTCHs (that is, a per discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs). Section 307(b)(1) of the BIPA modified the requirements of section 123 of the BBRA by requiring that the Secretary examine ''the feasibility and the impact of basing payment under such a system (the LTCH PPS) on the use of existing (or refined) hospital DRGs that have been modified to account for different resource use of LTCH patients, as well as the use of the most recently available hospital discharge data.''

When the LTCH PPS was implemented for cost reporting periods beginning on or after October 1, 2002, we adopted the same DRG patient classification system (that is, the CMS DRGs) that was utilized at that time under the hospital inpatient prospective payment system (IPPS). As a component of the LTCH PPS, we refer to the patient classification system as the ''LTC–DRGs.'' As discussed in greater detail below, although the patient classification system used under both the LTCH PPS and the IPPS are the same, the relative weights are different. The established relative weight methodology and data used under the LTCH PPS result in LTC–DRG relative weights that reflect ''the different resource use of long-term care hospital patients consistent with the statute''.

As part of our efforts to better recognize severity of illness among patients, in the FY 2008 IPPS final rule with comment period (72 FR 47130), the Medicare Severity diagnosis related groups (MS–DRGs) and the Medicare Severity long-term care diagnosis related groups (MS–LTC–DRGs) were adopted for the IPPS and the LTCH PPS, respectively, effective October 1, 2007 (FY 2008). For a full description of the development and implementation of the MS–DRGs and MS–LTC–DRGs, see the FY 2008 IPPS final rule with comment period (72 FR 47141 through 47175 and 47277 through 47299). (We note that in that same final rule, we revised the regulations at § 412.503 to specify that for LTCH discharges occurring on or

after October 1, 2007, when applying the provisions of this subpart for policy descriptions and payment calculations, all references to LTC–DRGs would be considered a reference to MS–LTC–DRGs. For the remainder of this section, we present the discussion in terms of the current MS–LTC–DRG patient classification unless specifically referring to the previous LTC–DRG patient classification system (that was in effect before October 1, 2007).) We believe the MS–DRGs (and by extension, the MS–LTC–DRGs) represent a substantial improvement over the previous CMS DRGs in their ability to differentiate cases based on severity of illness and resource consumption.

The MS–DRGs represent an increase in the number of DRGs by 207 (that is, from 538 to 745) (72 FR 47171). In addition to improving the DRG system's recognition of severity of illness, we believe the MS–DRGs are responsive to the public comments that were made on the FY 2007 IPPS proposed rule with respect to how we should undertake further DRG reform. The MS–DRGs use the CMS DRGs as the starting point for revising the DRG system to better recognize resource complexity and severity of illness. We have generally retained all of the refinements and improvements that have been made to the base DRGs over the years that recognize the significant advancements in medical technology and changes to medical practice.

In accordance with section 123 of the BBRA as amended by section 307(b)(1) of the BIPA and § 412.515, we use information derived from LTCH PPS patient records to classify LTCH discharges into distinct MS–LTC–DRGs based on clinical characteristics and estimated resource needs. As stated above, the MS–LTC–DRGs used as the patient classification component of the LTCH PPS correspond to the hospital inpatient MS–DRGs in the IPPS. We assign an appropriate weight to the MS–LTC–DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs.

In a departure from the IPPS, we use low volume MS–LTC–DRGs (less than 25 LTCH cases) in determining the MS–LTC–DRG relative weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. To manage the large number of low volume MS–LTC–DRGs (all MS–LTC–DRGs with fewer than 25 LTCH cases), for purposes of determining the relative weights, we group low volume MS–LTC–DRGs into 5 quintiles based on average charge per discharge. (A detailed discussion of the application of the Lewin Group ''quintile'' model that was used to develop the LTC–DRGs appears in the August 30, 2002 LTCH PPS final rule (67 FR 55978).) We also account for adjustments to payments for short-stay outlier (SSO) cases (that is, cases where the covered length of stay (LOS) at the LTCH is less than or equal to five-sixths of the geometric ALOS for the MS–LTC–DRG), and we make adjustments to account for nonmonotonicity, when necessary (as described below in this section).

B. Patient Classifications Into MS–LTC–DRGs

Generally, under the LTCH PPS, a Medicare payment is made at a predetermined specific rate for each discharge; that payment varies by the MS–LTC–DRG to which a beneficiary's stay is assigned. Cases are classified into MS–LTC–DRGs for payment based on the following six data elements:

- Principal diagnosis.
- Up to eight additional diagnoses.
- Up to six procedures performed.
- Age.
- Sex.
- Discharge status of the patient.

Upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the most current version of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). HIPAA Transactions and Code Sets Standards regulations at 45 CFR parts 160 and 162 require that no later than October 16, 2003, all covered entities must comply with the applicable requirements of subparts A and I through R of part 162. Among other requirements, those provisions direct covered entities to use the ASC X12N 837 Health Care Claim: Institutional, Volumes 1 and 2, version 4010, and the applicable standard medical data code sets for the institutional health care claim or equivalent encounter information transaction (see 45 CFR 162.1002 and 45 CFR 162.1102). For additional information on the ICD–9–CM Coding System, refer to the FY 2008 IPPS final rule with comment period (72 FR 47241 through 47243 and 47277 through 47281). We also refer readers to the detailed discussion on correct coding practices in the August 30, 2002 LTCH PPS final rule (67 FR 55981 through 55983). Additional coding instructions and examples are published in the *Coding Clinic for ICD–9–CM.*

Medicare contractors (that is, fiscal intermediaries (FIs), now called Medicare Administrative Contractors (MACs)) enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a MS–LTC–DRG can be made. During this process, the following types of cases are selected for further development:

- Cases that are improperly coded. (For example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.69, Other and unspecified radical abdominal hysterectomy, would be an inappropriate code for a male.)
- Cases including surgical procedures not covered under Medicare. (For example, organ transplant in a non-approved transplant center.)
- Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 262, Other severe protein-calorie malnutrition, contains all appropriate digits, but if it is reported with either fewer or more than 3 digits, the claim will be rejected by the MCE as invalid.)

After screening through the MCE, each claim is classified into the appropriate MS–LTC–DRG by the Medicare LTCH GROUPER software. The Medicare GROUPER software, which is used under the LTCH PPS, is specialized computer software, and is the same GROUPER software program used under the IPPS. The GROUPER software was developed as a means of classifying each case into a MS–LTC–DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the MS–LTC–DRG assignment, the Medicare contractor (FI or MAC) determines the prospective payment amount by using the Medicare PRICER program, which accounts for hospital-specific adjustments. Under the LTCH PPS, we provide an opportunity for the LTCH to review the MS–LTC–DRG assignments made by the Medicare contractor and to submit additional information within a specified timeframe as specified in § 412.513(c).

The GROUPER software is used both to classify past cases to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible MS–DRG classification changes and to recalibrate the MS–DRG and MS–LTC–DRG relative

weights during CMS' annual update under both the IPPS (§ 412.60(e)) and the LTCH PPS (§ 412.517), respectively. As discussed in greater detail in section III.D. of this preamble, with the implementation of section 503(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), there is the possibility that one feature of the GROUPER software program may be updated twice during a Federal FY (FFY) (October 1 and April 1) as required by the statute for the IPPS (69 FR 48954 through 48957). Specifically, as we discussed in the FY 2008 IPPS final rule with comment period (72 FR 47227 through 47278), diagnosis and procedure codes for new medical technology have the potential to be created and added to existing MS–DRGs (and MS–LTC–DRGs) in the middle of the FFY on April 1. New codes would be added to their predecessor MS–DRGs and MS–LTC–DRGs; no new MS–DRGs would be created. Additionally, this policy change will have no effect on the MS–LTC–DRG relative weights (during the FY), which will continue to be updated only once a year (October 1), nor will there be any impact on Medicare payments under the LTCH PPS during the FY as result of this policy. The use of the ICD–9–CM code set is also compliant with the current requirements of the Transactions and Code Sets Standards regulations at 45 CFR parts 160 and 162, published in accordance with HIPAA.

C. Organization of the MS–LTC–DRGs

The MS–DRGs (used under the IPPS) and the MS–LTC–DRGs (used under the LTCH PPS) are based on the CMS DRG structure. As noted above in this section, we refer to the DRGs under the LTCH PPS as MS–LTC–DRGs although they are structurally identical to the DRGs used under the IPPS. The MS–DRGs are organized into 25 major diagnostic categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are assigned based on a surgical hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. The GROUPER software program does not recognize all ICD–9–CM procedure codes as procedures affecting DRG assignment, that is, procedures which are not surgical (for example, EKG), or minor surgical procedures (for example, 86.11, Biopsy of skin and subcutaneous tissue).

In developing Version 25.0 of the GROUPER program (the FY 2008 MS–DRGs), the diagnoses comprising the CC list were completely redefined. The revised CC list is primarily comprised of significant acute disease, acute exacerbations of significant chronic diseases, advanced or end stage chronic diseases, and chronic diseases associated with extensive debility. In general, most chronic diseases were not included on the revised CC list. For a patient with a chronic disease, a significant acute manifestation of the chronic disease was required to be present and coded for the patient to be assigned a CC.

In addition to the revision of the CC list, each CC was also categorized as a major CC (MCC) or a CC based on relative resource use. Approximately 12 percent of all diagnoses codes were classified as a major CC (MCC), 24 percent as a CC, and 64 percent as a non CC. Diagnoses closely associated with mortality (ventricular fibrillation, cardiac arrest, shock, and respiratory arrest) were assigned as an MCC if the patient lived but as a non CC if the patient died.

The MCC, CC, and non CC categorization was used to subdivide the surgical and medical DRGs into up to three levels, with a case being assigned to the most resource intensive level (for example, a case with two secondary diagnoses that are categorized as an MCC and a CC is assigned to the MCC level). To create the MS–DRGs (and by extension, the MS–LTC–DRGs) individual DRGs were subdivided into three, two, or one level, depending on the CC impact on resources used for those cases.

As noted above in this section, further information on the development and implementation of the MS–DRGs and MS–LTC–DRGs can be found in the FY 2008 IPPS final rule with comment period (72 FR 47138 through 47175 and 47277 through 47299).

D. Method for Updating the MS–LTC–DRG Classifications and Relative Weights

1. Background

Under the LTCH PPS, relative weights for each MS–LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (that is, the MS–LTC–DRGs). To ensure that Medicare patients classified to each MS–LTC–DRG have access to an appropriate level of services and to encourage efficiency, each year based on the best available data, we calculate a relative weight for each MS–LTC–DRG that represents the resources needed by an average inpatient LTCH case in that MS–LTC–DRG. For example, cases in a MS–LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a MS–LTC–DRG with a relative weight of 1. Under § 412.517, the MS–LTC–DRG classifications and weighting factors (that is, relative weights) are adjusted annually to reflect changes in factors affecting the relative use of LTCH resources, including treatment patterns, technology and number of discharges.

In the June 6, 2003 LTCH PPS final rule (68 FR 34122 through 34125), we changed the LTCH PPS annual payment rate update cycle to be effective July 1 through June 30 instead of October 1 through September 30. In addition, because the patient classification system utilized under the LTCH PPS is the same DRG system that is used under the IPPS, in that same final rule, we explained that the annual update of the LTC–DRG classifications and relative weights will continue to remain linked to the annual reclassification and recalibration of the CMS DRGs used under the IPPS (as is the case with the MS–DRGs effective for discharges occurring on or after October 1, 2007 (see § 412.503)). Therefore, we specified that we will continue to update the LTC–DRG classifications and relative weights to be effective for discharges occurring on or after October 1 through September 30 each year. We further stated at that time that we will publish the annual proposed and final update of the LTC–DRGs in same notice as the proposed and final update for the IPPS (69 FR 34125). (We note that in section IV.B. of this preamble, we are proposing to revise § 412.535 in order to consolidate the annual July 1 and October 1 LTCH PPS update cycles, so that beginning with FY 2010, both the annual update to the standard Federal rate (and other rate and policy changes) and the annual update to the MS–LTC–DRGs would be presented in a single **Federal Register** publication to be effective on October 1 each year.) Under existing § 412.535(b), the FY 2008 update of the LTCH PPS patient classification system and relative weights was presented in the FY 2008 IPPS final rule with comment (72 FR 47277 through 47299). For the reader's benefit, we are providing a summary of the discussion presented in that final rule with comment in section III.D.2. of this preamble.

For FY 2008, the MS–LTC–DRG classifications and relative weights were updated based on LTCH data from the FY 2006 MedPAR file, which contained hospital bills data from the March 2007

update. The MS–LTC–DRG patient classification system for FY 2008 consists of 745 DRGs that formed the basis of the Version 25.0 GROUPER program utilized under the LTCH PPS. The 745 MS–LTC–DRGs included two ''error DRGs.'' As in the IPPS, we included two error DRGs in which cases that cannot be assigned to valid DRGs will be grouped. These two error DRGs are MS–LTC–DRG 998 (Principal Diagnosis Invalid as a Discharge Diagnosis) and MS–LTC–DRG 999 (Ungroupable). The other 743 MS–LTC–DRGs are the same DRGs used in the IPPS GROUPER program for FY 2008 (Version 25.0).

In the past, the annual update to the CMS DRGs was based on the annual revisions to the ICD–9–CM codes and was effective each October 1. The ICD–9–CM coding update process was revised as discussed in greater detail in the FY 2005 IPPS final rule (69 FR 48953 through 48957). Specifically, section 503(a) of the MMA includes a requirement for updating diagnosis and procedure codes twice a year instead of the former process of annual updates on October 1 of each year. This requirement is included as part of the amendments to the Act relating to recognition of new medical technology under the IPPS. (For additional information on this provision, including its implementation and its impact on the LTCH PPS, refer to the FY 2005 IPPS final rule (69 FR 48953 through 48957) and the RY 2006 LTCH PPS final rule (70 FR 24172 through 24177).) As noted above in this section, with the implementation of section 503(a) of the MMA, there is the possibility that one feature of the GROUPER software program may be updated twice during a FFY (October 1 and April 1) as required by the statute for the IPPS. Specifically, diagnosis and procedure codes for new medical technology may be created and added to existing DRGs in the middle of the FFY on April 1. No new MS–LTC–DRGs will be created or deleted. Consistent with our current practice, any changes to the MS–DRGs or relative weights will be made at the beginning of the next FFY (October 1). Therefore, there will not be any impact on MS–LTC–DRG payments under the LTCH PPS until the following October 1 (although the new ICD–9–CM diagnosis and procedure codes would be recognized April 1).

As we explained in the FY 2008 IPPS final rule with comment period (72 FR 47277), annual changes to the ICD–9–CM codes historically were effective for discharges occurring on or after October 1 each year. Thus, the manual and electronic versions of the GROUPER software, which are based on the ICD–9–CM codes, were also revised annually and effective for discharges occurring on or after October 1 each year. The patient classification system used under the LTCH PPS (MS–LTC–DRGs) is the same DRG patient classification system used under the IPPS, which historically had been updated annually and was effective for discharges occurring on or after October 1 through September 30 each year. We have also explained that since we do not publish a mid–year IPPS rule, we will assign any new diagnosis or procedure codes implemented on April 1 to the same DRG in which its predecessor code was assigned, so that there will be no impact on the DRG assignments until the following October 1. Any coding updates will be available through the Web sites provided in section II.G.10. of the preamble of the FY 2008 IPPS final rule with comment period (72 FR 47241 through 47243) and through the Coding Clinic for ICD–9–CM. Publishers and software vendors currently obtain code changes through these sources to update their code books and software system. If new codes are implemented on April 1, revised code books and software systems, including the GROUPER software program, will be necessary because we must use current ICD–9–CM codes. Therefore, for purposes of the LTCH PPS, because each ICD–9–CM code must be included in the GROUPER algorithm to classify each case into a MS–LTC–DRG, the GROUPER software program used under the LTCH PPS would need to be revised to accommodate any new codes.

At the September 2007 ICD–9–CM C&M Committee meeting, there were no compelling requests for an April 1, 2008 implementation of new ICD–9–CM codes, and therefore, we expect that the next update to the ICD–9–CM coding system will not occur until October 1, 2008 (FY 2009). Therefore, we expect that the ICD–9–CM coding set implemented on October 1, 2007, will continue through September 30, 2008 (FY 2008). The next update to the MS–LTC–DRGs and relative weights for FY 2009 will be presented in the FY 2009 IPPS proposed and final rules.

2. FY 2008 MS–LTC–DRG Relative Weights

In accordance with § 412.523(c), we adjust the LTCH PPS standard Federal rate by the MS–LTC–DRG relative weights in determining payment to LTCHs for each case. Relative weights for each MS–LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups as described in § 412.515. To ensure that Medicare patients who are classified to each MS–LTC–DRG have access to services and to encourage efficiency, we calculate a relative weight for each MS–LTC–DRG that represents the resources needed by an average inpatient LTCH case in that MS–LTC–DRG. For example, cases in a MS–LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a MS–LTC–DRG with a weight of 1.

As we discussed in the FY 2008 IPPS final rule with comment period (72 FR 47282), the MS–LTC–DRG relative weights effective under the LTCH PPS for Federal FY 2008 were calculated using the March 2007 update of FY 2006 MedPAR data and Version 25.0 of the GROUPER software.

LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation or wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have (from a perspective of charges) relatively high (or low) charges. Distribution of cases with relatively high (or low) charges in specific MS–LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we use a hospital-specific relative value (HSRV) method to calculate relative weights. We believe this method removes this hospital-specific source of bias in measuring average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular MS–LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. (See the FY 2008 IPPS final rule with comment period for further information on the application of the HSRV methodology under the LTCH PPS (72 FR 47282).)

To account for MS–LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), we grouped those ''low volume'' MS–LTC–DRGs into 1 of 5 categories (quintiles) based on average charges for the purposes of determining relative weights. Each of the low volume MS–LTC–DRGs grouped to a specific quintile received the same relative weight and ALOS using the formula applied to the regular MS–LTC–DRGs (25 or more cases). (See the FY 2008 IPPS final rule with comment period for further explanation of the development and composition of each of the 5 low volume quintiles for FY 2008 (72 FR 47283 through 47288).)

After grouping the cases in the appropriate MS–LTC–DRG, generally, we calculated the relative weights by

first removing statistical outliers and cases with a LOS of 7 days or less. Next, we adjusted the number of cases remaining in each MS–LTC–DRG for the effect of SSO cases under § 412.529. The short-stay adjusted discharges and corresponding charges were used to calculate ''relative adjusted weights'' in each MS–LTC–DRG using the HSRV method. In determining the FY 2008 MS–LTC–DRG relative weights, we also made adjustments, as necessary, to adjust for nonmonotonicity for the severity levels within a specific base MS–LTC–DRG. (Refer to the FY 2008 IPPS final rule with comment period for further information on the treatment of severity levels and adjustments for nonmonotically increasing relative weights for FY 2008 (72 FR 47282 through 47283 and 47293 through 47295).) Furthermore, we determined FY 2008 MS–LTC–DRG relative weights for the 185 MS–LTC–DRGs for which there were no LTCH cases in the database (that is, LTCH claims from the FY 2006 LTCH MedPAR files). (A list of the FY 2008 ''no-volume'' MS–LTC–DRGs and further explanation of their FY 2008 relative weight assignment can be found in the FY 2008 IPPS final rule with comment period (72 FR 47289 through 47293).)

In adopting the MS–LTC–DRGs beginning in FY 2008, we established a 2-year transition. Specifically, for FY 2008, the first year of the transition, 50 percent of the relative weight for a MS–LTC–DRG is based on the average LTC–DRG relative weight under Version 24.0 of the LTC–DRG GROUPER. The remaining 50 percent of the relative weight is based on the MS–LTC–DRG relative weight under Version 25.0 of the MS–LTC–DRG GROUPER. (See the FY 2008 IPPS final rule with comment period (72 FR 47295) for additional details on the methodology used to determine the transition blended MS–LTC–DRG relative weights for FY 2008.)

In the RY 2008 LTCH PPS final rule (72 FR 26882), under the broad authority conferred upon the Secretary under section 123 of Public Law 106–113 as amended by section 307(b) of Public Law 106–554 to develop the LTCH PPS, we established that beginning with the update for FY 2008, the annual update to the MS–LTC–DRG classifications and relative weights will be done in a budget neutral manner such that estimated aggregate LTCH PPS payments would be unaffected, that is, would be neither greater than nor less than the estimated aggregate LTCH PPS payments that would have been made without the MS–LTC–DRG classification and relative weight changes. Historically, we had not updated the LTC–DRGs in a budget neutral manner because we believed that past fluctuations in the relative weights were primarily due to changes in LTCH coding practices rather than changes in patient severity. In light of the most recently available LTCH claims data at that time, which indicated that LTCH claims data no longer appeared to significantly reflect changes in LTCH coding practices in response to the implementation of the LTCH PPS, we believed that, beginning with FY 2008, it is appropriate to update the MS–LTC–DRGs in a budget neutral manner (that is, so that estimated aggregate LTCH PPS payments will neither increase nor decrease). Accordingly, in that same final rule with comment period, we established under § 412.517(b) that the annual update to the MS–LTC–DRG classifications and relative weights be done in a budget neutral manner. (As noted above in section III.A. of this preamble, we revised the regulations at § 412.503 to specify that ''MS–LTC–DRG'' is used in place of ''LTC–DRG'' for discharges occurring on or after October 1, 2007.) Consistent with that provision, we updated the MS–LTC–DRG classifications and relative weights for FY 2008 based on the most recent available data and included a budget neutrality adjustment. For further details on the methodology and calculation of the FY 2008 MS–LTC–DRG budget neutrality factor, refer to the FY 2008 IPPS final rule with comment period (72 FR 47295 through 47296).

Table 11 of the Addendum to the FY 2008 IPPS final rule with comment period lists the MS–LTC–DRGs and their respective transition blended budget neutral relative weights, geometric mean LOS, ''short-stay outlier threshold'' (that is, five-sixths of the geometric mean LOS), and the ''IPPS Comparable Threshold'' (that is, the IPPS geometric average length of stay plus one standard deviation) for each MS–LTC–DRG for FY 2008 (see (72 FR 48143 through 48157), and the technical correction made in the October 10, 2007 correction notice (72 FR 57733), which has been reprinted in Table 3 of the Addendum of this proposed rule for convenience).

As we noted previously in this section, there were no new ICD–9–CM code requests for an April 1, 2008 update. Therefore, we expect that Version 25.0 of the MS–DRG GROUPER software established in the FY 2008 IPPS final rule with comment period will continue to be effective until October 1, 2008. Moreover, the MS–LTC–DRGs and relative weights for FY 2008 established in Table 11 of that same IPPS final rule with comment period (78 FR 48143 through 48157) will continue to be effective until October 1, 2008, (just as they would have been even if there had been any new ICD–9–CM code requests for an April 1, 2008 update). We note that Table 11 was corrected in the FY 2008 IPPS correction notice that appeared in the October 10, 2007 **Federal Register** (72 FR 57733) and is hereinafter referred to as the second FY 2008 IPPS correction notice. Accordingly, Table 3 in the Addendum of this proposed rule lists the MS–LTC–RGs and their respective relative weights, geometric ALOS, ''Short-Stay Outlier Threshold'' and ''IPPS Comparable Threshold'' that we will continue to use for the period of July 1, 2008 through September 30, 2009. (As noted above, this table is the same as Table 11 of the Addendum to the FY 2008 IPPS final rule with comment period, including the technical correction made in the second FY 2008 IPPS correction notice (72 FR 57733), which has been reprinted in Table 3 of the Addendum of this proposed rule for the reader's convenience.) We expect the next update to the ICD–9–CM coding system to be presented in the FY 2009 IPPS proposed rule (since we expect that there will be no April 1, 2008 updates to the ICD–9–CM coding system). In addition, the proposed MS–DRGs and GROUPER for FY 2009 that would be used for the IPPS and the LTCH PPS, effective October 1, 2008, and the proposed update to the MS–LTC–DRG relative weights for FY 2009 will be presented in the IPPS FY 2009 proposed rule that will be published in the **Federal Register**.

IV. Proposed Changes to the LTCH PPS Payment Rates and Other Proposed Changes for the 2009 LTCH PPS Rate Year

[If you choose to comment on issues in this section, please include the caption ''PROPOSED CHANGES TO LTCH PPS PAYMENT RATES FOR THE 2009 LTCH PPS RATE YEAR'' at the beginning of your comments.]

A. Overview of the Development of the Payment Rates

The LTCH PPS was effective beginning with a LTCH's first cost reporting period beginning on or after October 1, 2002. Effective with that cost reporting period, LTCHs are paid, during a 5-year transition period, a total LTCH prospective payment that is comprised of an increasing proportion of the LTCH PPS Federal rate and a decreasing proportion based on reasonable cost-based principles, unless

the hospital makes a one-time election to receive payment based on 100 percent of the Federal rate, as specified in § 412.533. New LTCHs (as defined at § 412.23(e)(4)) are paid based on 100 percent of the Federal rate, with no phase-in transition payments.

The basic methodology for determining LTCH PPS Federal prospective payment rates is set forth at § 412.515 through § 412.536. In this section, we discuss the proposed factors that would be used to update the LTCH PPS standard Federal rate for the 2009 LTCH PPS rate year that would be effective for LTCH discharges occurring on or after July 1, 2008 through September 30, 2009. When we implemented the LTCH PPS in the August 30, 2002 LTCH PPS final rule (67 FR 56029 through 56031), we computed the LTCH PPS standard Federal payment rate for FY 2003 by updating the best latest available (FY 1998 or FY 1999) Medicare inpatient operating and capital cost data, using the excluded hospital market basket.

Section 123(a)(1) of the BBRA requires that the PPS developed for LTCHs be budget neutral for the initial year of implementation. Therefore, in calculating the standard Federal rate under § 412.523(d)(2), we set total estimated LTCH PPS payments equal to estimated payments that would have been made under the reasonable cost-based payment methodology had the LTCH PPS not been implemented. Section 307(a)(2) of the BIPA specified that the increases to the target amounts and the cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of the BIPA shall not be considered in the development and implementation of the LTCH PPS. Section 307(a)(2) of the BIPA also specified that enhanced bonus payments for LTCHs provided for by section 122 of Public Law 106–113 were not to be taken into account in the development and implementation of the LTCH PPS.

Furthermore, as specified at § 412.523(d)(1), the standard Federal rate is reduced by an adjustment factor to account for the estimated proportion of outlier payments under the LTCH PPS to total estimated LTCH PPS payments (8 percent). For further details on the development of the FY 2003 standard Federal rate, see the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037), and for subsequent updates to the LTCH PPS Federal rate, refer to the following final rules: RY 2004 LTCH PPS final rule (68 FR 34134 through 34140), RY 2005 LTCH PPS final rule (69 FR 25682 through 25684), RY 2006 LTCH PPS final rule (70 FR 24179 through 24180), RY 2007 LTCH PPS final rule (71 FR 27819 through 27827), and RY 2008 LTCH PPS final rule (72 FR 26870 through 27029).

B. Proposed Consolidation of the Annual Updates for Payment and MS–LTC–DRG Relative Weights to One Annual Update

In the August 30, 2002 final rule for the implementation of the LTCH PPS, we established a publication schedule at § 412.535 for publishing information pertaining to the LTCH PPS. That schedule set a publication date of on or before August 1 prior to the beginning of each FFY, which coincided with the statutorily mandated publication schedule for the IPPS (67 FR 55954). In the June 6, 2003 LTCH PPS final rule, we amended § 412.535 to provide that ''(a) Information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of each long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1. (b) Information on the LTC–DRG classification and associated weighting factors is published on or before August 1 prior to the beginning of each Federal fiscal year.'' At the time, we explained that the LTC–DRG patient classifications used by the LTCH PPS for FY 2003 are based directly on the same version of DRGs used by the IPPS, that is, Grouper 20 (68 FR 34126). (We note, as discussed above in section III of this proposed rule, effective for LTCH PPS discharges occurring on or after October 1, 2007, all references to LTC–DRGs and DRGs in the existing regulations are understood to represent MS–LTC–DRGs. (See § 412.503.)) Therefore, we did not make any changes to the timing for the annual update for LTC–DRG classifications and relative weights. The annual update to the DRG classifications and relative weights continues to be published on a FFY cycle, as is the update of the acute care hospital IPPS DRG system. Our intent in making the change in the payment rate update schedule for the LTCH PPS was to avoid concurrent publications of the annual updates for these two significant payment systems for purposes of administrative feasibility and efficiency. With this in mind, we changed the effective date for the annual update of the LTCH PPS payment rate from October 1 to July 1 of each year beginning with July 1, 2003. We believed this change would help use our limited resources effectively and facilitate a timely publication of both the IPPS and LTCH PPS proposed and final rules. Thus, currently the annual update of the LTCH PPS Federal rates do not coincide with the start of the FFY, but rather, are effective prior to the FFY.

In this proposed rule, we are proposing a change to the current schedule for the annual updates of the LTCH PPS Federal payment rates. We propose to consolidate the rulemaking cycle for the annual update of the LTCH PPS Federal payment rates and description of the methodology and data used to calculate these payment rates, with the annual updating of the MS–LTC–DRG classifications and associated weighting factors for LTCHs so that the updates to the rates and the weights would both be effective on October 1 each FFY. Under this proposal, the annual updates to the LTCH PPS Federal rates would no longer be published with a July 1 effective date.

In proposing this change to the LTCH PPS rulemaking schedule, we took into account comments on prior rules as well as recent input from the LTCH industry. After further considering those comments and concerns, we agree that having the effective date of the annual update of the LTCH PPS Federal payment rates on July 1 of each year while retaining the October 1 effective date for updating LTC–DRG classifications and weights has proved both burdensome and time-consuming for all parties involved. Although a consolidated update may also be resource intensive, it would eliminate some duplicative resource use. For example, some of our resources used for the payment simulations that are used to estimate LTCH PPS payments for purposes of the respective impact analyses are duplicated for the annual LTCH PPS rate update and the annual MS-LTC-DRG update. Moreover, we understand the concern that there are increased costs involved in updating the billing systems of LTCHs to accommodate two separate updates, one for the Federal rate and one for the DRG weights, in the same cost reporting period.

We also considered the possibility that two separate updates could increase the potential for calculating payment errors under the LTCH PPS.

In order to revise the payment rate update to an October 1 through September 30 period, we propose to first extend the 2009 rate period to September 30, 2009 such that RY 2009 would be 15 months. This proposed 15-month rate period would extend from July 1, 2008 through September 30, 2009. We believe that the additional 3 months to RY 2009 (July, August and

September), would provide for a smooth transition to a consolidated annual update for both the LTCH PPS payment rates and the LTCH PPS MS–LTC–DRG classifications and weighting factors. (We believe that proposing to revise the payment rate update to an October 1 through September 30 period by proposing to shorten RY 2009 such that it would only be 3 months (that is, July 1, 2008 through September 30, 2008), would exacerbate the current burdensome and time-consuming biannual update process by resulting in two payment rate changes within a very short (3 month) period of time.) Under this proposal, after the 2009 rate period, the rate period for the LTCH PPS payment rate and other policy changes would be October 1 through September 30. (The annual update to the MS–LTC–DRG classifications and relative weights would continue to be effective on October 1.) The October through September rate period would first begin with October 1, 2009. The next update to the LTCH PPS Federal rates after RY 2009 would be for RY 2010. (We note that if we finalize this proposal to move the annual LTCH PPS rate update cycle to October 1 effective October 1, 2009, the LTCH PPS rate year would coincide with Federal FY beginning in 2010.) We are proposing to make a change to the regulations at § 412.503 to redefine the LTCH PPS' rate year to mean October 1 through September 30. We are also proposing to revise § 412.535 to reflect the proposed change to the annual payment rate update cycle described above. The discussion of the proposed 15-month market basket update for the proposed 2009 rate year can be found below in sections IV.D.2. and 3. of this proposed rule.

C. LTCH PPS Market Basket

1. Overview of the RPL Market Basket

Historically, the Medicare program has used a market basket to account for price increases in the services furnished by providers. The market basket used for the LTCH PPS includes both operating and capital-related costs of LTCHs because the LTCH PPS uses a single payment rate for both operating and capital-related costs. The development of the initial LTCH PPS standard Federal rate for FY 2003, using the excluded hospital with capital market basket, is discussed in further detail in the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56033).

In the August 30, 2002 final rule (67 FR 56016 through 56017 and 56030), which implemented the LTCH PPS, we established the use of the excluded hospital with capital market basket as the LTCH PPS market basket. The excluded hospital with capital market basket was also used to update the limits on LTCHs' operating costs for inflation under the TEFRA reasonable cost-based payment system. We explained that we believe the use of the excluded hospital with capital market basket to update LTCHs' costs for inflation was appropriate because the excluded hospital market basket (with a capital component) measures price increases of the services furnished by excluded hospitals, including LTCHs. For further details on the development of the excluded hospital with capital market basket, see the RY 2004 LTCH PPS final rule (68 FR 34134 through 34137).

In the RY 2007 LTCH PPS final rule (71 FR 27810), we noted that based on our research, we did not develop a market basket specific to LTCH services. We are still unable to create a separate market basket specifically for LTCHs due to the small number of facilities and the limited amount of data that is reported (for instance, only approximately 15 percent of LTCHs reported contract labor cost data for 2002). In that same final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, we adopted the ''Rehabilitation, Psychiatric and Long-Term Care (RPL) market basket'' as the appropriate market basket of goods and services under the LTCH PPS for discharges occurring on or after July 1, 2006. Specifically, beginning with the 2007 LTCH PPS rate year, for the LTCH PPS, we adopted the use of the RPL market basket based on FY 2002 cost report data. We choose to use the FY 2002 Medicare cost report data because it was the most recent, relatively complete cost data for inpatient rehabilitation facilities (IRFs), inpatient psychiatric facilities (IPF), and LTCHs available at the time of rebasing.

The RPL market basket is determined based on the operating and capital costs of IRFs, IPFs and LTCHs. All IRFs are now paid under the IRF PPS Federal payment rate, all LTCHs are now paid 100 percent of the Federal rate under the LTCH PPS, and most IPFs are transitioning to payment based on 100 percent of the Federal per diem payment amount under the IPF PPS (payments to IPFs will be based exclusively on 100 percent of the Federal rate for cost reporting periods beginning on or after January 1, 2008). As we explained in that same final rule, we believe a market basket based on the data of IRFs, IPFs and LTCHs is appropriate to use under the LTCH PPS since it is the best available data that reflects the cost structures of LTCHs.

For further details on the development of the RPL market basket, including the methodology for determining the operating and capital portions of the RPL market basket, see the RY 2007 LTCH PPS final rule (71 FR 27810 through 27817).

2. Proposed Market Basket Estimate for the 2009 LTCH PPS Rate Year

As discussed in greater detail above in this section, for the 2009 LTCH PPS rate year, we are proposing to consolidate the current LTCH PPS rate year (payment rates and other policy changes) update and fiscal year MS–LTC–DRG update into one annual update cycle. Presently, the next payment rate update cycle would be effective July 1, 2008 through June 30, 2009. In proposing to consolidate the annual payment rate and MS–LTC–DRG updates to be effective October 1 each year, we would extend the next rate year update by 3 months (through September 30, 2009), which would make the RY 2009 rate effective for a 15-month period. Accordingly, for the proposed 2009 LTCH PPS rate year, we are proposing to use a 15-month (that is, July 1, 2008 through September 30, 2009) estimate of the RPL market basket based on the best available data.

Consistent with our historical practice, we estimate the RPL market basket update based on Global Insight, Inc.'s forecast using the most recent available data. Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of CMS' market baskets. To determine a 15-month market basket update for RY 2009, we calculate the 5-quarter moving average index level for July 1, 2008 through September 30, 2009 and the 4-quarter moving average index level for July 1, 2007 through June 30, 2008. The percent change in these two values represents the proposed 15-month market basket update.

Based on Global Insight's 4th quarter 2007 forecast with history through the 3rd quarter of 2007, the projected 15-month market basket estimate for the proposed 15-month 2009 LTCH PPS rate year is 3.5 percent. Therefore, consistent with our historical practice of estimating market basket increases based on the best available data, we are proposing a market basket update of 3.5 percent for the proposed 15-month 2009 rate year based on the proposed consolidation of the annual updates for payment rates and MS–LTC–DRGs. Furthermore, because the proposed RY 2009 update is based on the most recent

market basket estimate for the 15-month period (currently 3.5 percent), we are also proposing that if more recent data are subsequently available (for example, a more recent estimate of the market basket), we would use such data, if appropriate, to determine the RY 2009 update in the final rule. (The proposed update to the standard Federal rate for RY 2009 is discussed below in section IV.E. of this preamble.)

We note that the most recent estimate of the RPL market basket for July 1, 2008 through June 30, 2009, based on Global Insight's 4th quarter 2007 forecast with history through the 3rd quarter of 2007, is 3.1 percent. We determine this 12-month market basket update by calculating the 4-quarter moving average index level for July 1, 2008 through June 30, 2009 and the 4-quarter moving average index level for July 1, 2007 through June 30, 2008. The percent change in these two values represents the proposed 12-month market basket update. Consistent with our historical practice of using market basket estimates based on the most recent available data, if we were not proposing to consolidate the two annual LTCH PPS payment system updates by proposing to extend the 2009 LTCH PPS rate year by 3 months, we would have proposed a market basket update for a 12 month RY 2009 of 3.1 percent, based on the most recent estimate of the 12-month RPL market basket for July 1, 2008 through June 30, 2009.

D. One-time Prospective Adjustment to the Standard Federal Rate

As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56027), consistent with the statutory requirement for budget neutrality in section 123(a)(1) of the BBRA, we estimated aggregate payments under the LTCH PPS for FY 2003 to be equal to the estimated aggregate payments that would be made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations used the best available data at the time and necessarily reflected several assumptions (for example, costs, inflation factors and intensity of services provided). In conducting our budget neutrality calculations, we took into account the statutory requirement that certain statutory provisions that affect the level of payments to LTCHs in years prior to the implementation of the LTCH PPS shall not be taken into account in the development and implementation of the LTCH PPS. Specifically, section 307(a)(2) of the BIPA requires that the increases to the target amounts and the increases to the cap on the target amounts for LTCHs provided for by section 307(a)(1) of the BIPA (as set forth in section 1886(b)(3)(J) of the Act) and the enhanced bonus payments for LTCHs provided for by section 122 of the BBRA (as set forth in section 1886(b)(2)(E) of the Act) are not to be taken into account in the development and implementation of the LTCH PPS.

As the LTCH PPS has progressed, we have been monitoring payment data in order to evaluate whether there is a significant difference between the payments estimated on the basis of the data available at the time of the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037) and payment estimates based on more complete data that have become available since that time. We indicated from the inception of the LTCH PPS that it was possible for the aggregate amount of actual payments in FY 2003 to be significantly higher or lower than the estimates on which the budget neutrality calculations were based to the extent that later, more complete data differ significantly from the data that were available at the time of the original calculations.

Section 123(a)(1) of the BBRA, as amended by section 307(b) of BIPA, provides broad authority to the Secretary in developing the LTCH PPS, including the authority for establishing appropriate adjustments. Under this broad authority to make appropriate adjustments, we provided in § 412.523(d)(3) of the regulations, for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by July 1, 2008, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years.

In the RY 2008 LTCH PPS final rule (72 FR 26902), based on the best available data at that time, we estimated that total Medicare program payments for LTCH services over the next 5 LTCH PPS rate years would be $4.65 billion for the 2008 LTCH PPS rate year; $4.85 billion for the 2009 LTCH PPS rate year; $5.04 billion for the 2010 LTCH PPS rate year; $5.25 billion for the 2011 LTCH PPS rate year; and $5.50 billion for the 2012 LTCH PPS rate year.

In this proposed rule, consistent with the methodology established in the August 30, 2002 final rule (67 FR 56036), and based on the most recent available data, we estimate that total Medicare program payments for LTCH services for the next 5 LTCH PPS rate years would be as shown in Table 4.

TABLE 4

LTCH PPS rate year	Estimated payments ($ in billions)
2009	4.67
2010	4.82
2011	5.06
2012	5.36
2013	5.73

In accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037), these estimates are based on the most recent available data. These estimates are also based on our estimate of LTCH PPS rate year payments to LTCHs using CMS' Office of the Actuary's (OACT) most recent estimate of the RPL market basket of 3.1 percent for the 2009 LTCH PPS rate year, 2.8 percent for the 2010 LTCH PPS rate year, 3.0 percent for the 2011 LTCH PPS and 2012 rate years, and 3.1 percent for the 2013 LTCH PPS rate year. (We note that OACT develops its spending projections based on existing policy. Therefore, changes that have not yet been implemented, including those proposed in this proposed rule, and changes as a result of the recent Medicare, Medicaid, and SCHIP Extension Act of 2007, are not reflected in the spending projections shown in this section.) We also considered OACT's most recent projections of changes in Medicare beneficiary enrollment that estimate increases in Medicare fee-for-service beneficiary enrollment of 0.6 percent in the 2009 LTCH PPS rate year, 0.7 percent in the 2010 LTCH PPS rate year, 1.2 percent in the 2011 LTCH PPS rate year, 2.0 percent in the 2012 LTCH PPS rate year, and 2.5 percent in the 2013 LTCH PPS rate year. It is important to note that, while we provide these estimates of future payments under the LTCH PPS in order to provide a projected estimate of payments to LTCHs, these estimates will be neither the basis for determining whether the one-time budget neutrality adjustment available under § 412.523(d)(3) should be proposed, nor are these estimates the basis for any of the proposed policy changes presented in this proposed rule. It is important to note that any proposal regarding the one-time budget neutrality adjustment would be based solely on the data related to FY 2003 that would be available at the time of the proposal, rather than on projections of payments under LTCH PPS for future years.

In the August 30, 2002 LTCH PPS final rule implementing the LTCH PPS (67 FR 55954), we set forth the implementing regulations, based upon

the broad authority granted to the Secretary, under section 123 of the BBRA (as amended by section 307(b) of the BIPA). Section 123(a)(1) of the BBRA required that the system ''maintain budget neutrality.'' The statute requires the LTCH PPS to be budget neutral in FY 2003, so that estimated aggregate payments under the LTCH PPS for FY 2003 should be equal to the estimated aggregate payments that would be made if the LTCH PPS were not implemented for FY 2003. The methodology for determining the LTCH PPS standard Federal rate for FY 2003 that would ''maintain budget neutrality'' is described in considerable detail in the August 30, 2002 final rule (67 FR 56027 through 56037). As we discussed previously in this section, our methodology for estimating payments for the purposes of budget neutrality calculations used the best available data, and necessarily reflected assumptions in estimating aggregate payments that would be made if the LTCH PPS was not implemented. In the August 30, 2002 final rule, we also stated our intentions to monitor LTCH PPS payment data to evaluate whether later data varied significantly from the data available at the time of the original budget neutrality calculations (for example, data related to inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). To the extent the later data significantly differ from the data employed in the original calculations, the aggregate amount of payments during FY 2003 based on later data may be higher or lower than the estimates upon which the budget neutrality calculations were based. In that same final rule, the Secretary exercised his broad authority in establishing the LTCH PPS and provided for the possibility of a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, in § 412.523(d)(3). This deadline was revised to July 1, 2008, in the RY 2007 LTCH PPS final rule. As we discussed in the RY 2007 LTCH PPS final rule (71 FR 27842 through 27844), because the LTCH PPS was only recently implemented, sufficient new data had not yet been generated that would enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Therefore, in that same final rule, we did not implement the one-time adjustment provided under § 412.523(d)(3) so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the PPS rates for future years. However, we stated that we would continue to collect and interpret new data as it became available in order to determine whether we should propose such an adjustment in the future. Therefore, we revised § 412.523(d)(3) by changing the original October 1, 2006 deadline (established in the August 30, 2002 final rule that implemented the LTCH PPS) to July 1, 2008, to postpone the possible one-time adjustment due to the time lag in the availability of Medicare data upon which a proposed adjustment would be based. We noted that there is a lag time between the submission of claims data and cost report data, and the availability of that data in the MedPAR files and HCRIS, respectively. As also explained in that same final rule, we believed that postponing the deadline of the possible one-time prospective adjustment to the LTCH PPS rates provided for in § 412.523(d)(3) to July 1, 2008, would allow our decisions regarding a possible adjustment to be based on more complete and up-to-date data. It should be noted that, in the years following the initial implementation of the LTCH PPS, we have already adopted some revised policies and adjustments to LTCH PPS payment levels. However, none of these revised policies and payment adjustments have addressed the intended purpose of the adjustment allowed under § 412.523(d)(3) of the regulations, to ensure that any significant difference between the original estimates and calculations based on more recent data are not perpetuated in the LTCH PPS rates for future years. For example, the adjustments that we have made to account for coding changes in excess of real severity increases in RY 2007 and RY 2008 were made to account for changes in coding behavior in the years following the implementation of the LTCH PPS, and not to address any issue regarding the budget neutrality calculations that were used to establish the base rate for the LTCH PPS.

Section 114(c)(4) of MMSEA provides that the ''Secretary shall not, for the 3-year period beginning on the date of the enactment of this Act, make the one-time prospective adjustment to long-term care hospital prospective payment rates provided for in section 412.523(d)(3) of title 42, Code of Federal Regulations, or any similar provision.'' That provision delays the effective date of any one-time budget neutrality adjustment until no earlier than December 29, 2010. Therefore, we are proposing to revise § 412.523(d)(3) of the regulations to conform with this requirement.

Prior to the enactment of the Medicare, Medicaid, and SCHIP Extension Act of 2007, we had developed a methodology for evaluating whether to propose a one-time budget neutrality adjustment under § 412.523(d)(3) of the regulations. In order to inform the public of our thinking, and to stimulate comments for our consideration during the 3-year delay in implementing any one-time budget neutrality adjustment under the law referenced above, we have decided to discuss our analysis and its results in this proposed rule. Evaluating the appropriateness of the possible one-time prospective adjustment under § 412.523(d)(3) requires a thorough review of the relevant LTCH data (as described below). When we established the FY 2003 standard Federal rate in a budget neutral manner, we used the most recent LTCH cost data available at that time (that is, FY 1999 data), and trended that data forward to estimate what Medicare would have paid to LTCHs in FY 2003 under the TEFRA payment system if the PPS were not implemented for FY 2003 (67 FR 56033). We have conducted a thorough review of the relevant data. We now have cost data from FY 2002, representing the final year LTCHs were paid under the TEFRA payment system. The cost report data for FY 2002 is comprised of a high proportion of settled and audited cost reports submitted by LTCHs. We also have payment data on the first year of the LTCH PPS (that is, FY 2003). On the basis of our review of these data sources, we developed a potential methodology for determining whether the one-time adjustment available under § 412.523(d)(3) of the regulations should be proposed. On the basis of this methodology, we have also determined a potential method for computing an adjustment, if appropriate. Employing that methodology, our analysis has indicated that a permanent adjustment factor of 0.9625 to the LTCH PPS standard Federal rate could be warranted. Consistent with the requirements of section 114(c)(4) of the recently enacted Medicare, Medicaid, and SCHIP Extension Act of 2007, we are not proposing any adjustment for the upcoming rate year. However, we welcome public comment on our analysis, which we are presenting in this proposed rule. We will consider these comments if and when we decide to propose an actual adjustment. We note that in the final rule, we will respond to any comments on our proposed changes to § 412.523(d)(3) of the regulations that would—(1) specify

the methodology for the one-time budget neutrality adjustment; and (2) implement the requirements of section 114(c)(4) of Public Law 110–173, in the final rule.

In order to determine whether a one-time budget neutrality adjustment could be warranted, it is necessary to estimate both aggregate payments under the LTCH PPS for FY 2003 and the estimated aggregate payments that would have been made under the TEFRA system in FY 2003 if the LTCH PPS were not implemented. While we know actual TEFRA payments to LTCHs for FY 2002, the last year of payment under that methodology, it is necessary to estimate what TEFRA payments would have been in FY 2003 if the new LTCH PPS had not been implemented. In developing our methodology for evaluating a one-time adjustment, we considered whether we should employ actual FY 2003 costs to calculate estimated TEFRA payments for FY 2003 or employ costs for FY 2002 trended forward to FY 2003 as the basis for the calculation. Basing the estimate on actual FY 2003 costs would avoid the need to employ any factor to update costs from FY 2002 to FY 2003. However, since FY 2003 was the first year of payment under the LTCH PPS, the cost experience of LTCHs in that year would reflect their response to the incentives provided by the new payment system, instead of reflecting behavior under the reasonable cost payment system. Indeed, implementation of an LTCH PPS should directly affect the behavior of LTCHs, and therefore, the level of costs in LTCHs. One of the incentives of a PPS is to improve efficiency in the delivery of care, which generally results in decreased cost per discharge. For this reason, employing FY 2003 costs directly could be a poor basis for estimating payments that ''would have been made if the LTCH PPS were not implemented.'' On balance, we believe that trending forward for 1 year the costs incurred under the last year of the TEFRA payment system poses a smaller prospect for distortion than using costs incurred during the subsequent year, when the incentives faced by LTCHs to reduce costs could have had a significant effect. Therefore, we could base our calculation of the estimated aggregate payments that would have been made if the LTCH PPS were not implemented (that is, estimated FY 2003 TEFRA payments) on FY 2002 costs, trended forward to FY 2003 using the excluded hospital market basket. It may be worth noting in this context that some representatives of LTCHs have expressed concern that employing FY 2003 costs directly would provide a poor basis upon which to estimate payments that ''would have been made if the LTCH PPS were not implemented'' for precisely the reasons we have just discussed. We believe that basing the estimate of FY 2003 TEFRA payments on FY 2002 costs trended forward should satisfy these concerns.

In determining whether a one-time budget neutrality adjustment could be warranted, the estimate of the payments that would have been made in FY 2003 under the TEFRA methodology should be compared to estimated payments under the new LTCH PPS in FY 2003. The most direct way to determine payments under the new LTCH PPS, of course, is simply to aggregate the actual payments calculated under the LTCH PPS methodology for the discharges that occurred during the first year of the LTCH PPS (FY 2003). However, that approach raises an issue of consistency in the use of data. The discharges for which we paid under the LTCH PPS during FY 2003 are obviously not the same as the discharges for which costs were incurred during the last year of payment under the TEFRA methodology, FY 2002. For the reasons we have just discussed, we believe that the best way to estimate the TEFRA payments that would have been made to LTCHs during FY 2003 is to use inflated FY 2002 costs as a proxy for FY 2003 costs. Comparing actual FY 2003 LTCH PPS payments to FY 2003 TEFRA payments estimated on the basis of FY 2002 discharges would amount to a comparison between payments related to two different sets of discharges, potentially skewing the results. Therefore consistency suggests that, rather than comparing TEFRA payments based on FY 2002 costs updated to FY 2003, to aggregate LTCH PPS payments for discharges that actually occurred in FY 2003, it would be preferable to compare estimated TEFRA payments based on updated FY 2002 costs to the estimated payments that would have been made under LTCH PPS methodology in FY 2003 for those same FY 2002 discharges. In other words, we believe that the best approach would be to compare—

- Estimated aggregate FY 2003 TEFRA payments calculated on the basis of FY 2002 costs updated to FY 2003; to
- Estimated aggregate payments that would have been made in FY 2003 under the LTCH PPS methodology, by applying the FY 2003 LTCH payment rules to the discharges that occurred in FY 2002.

In this way, we would ensure that we are comparing the estimated FY 2003 TEFRA payments, which are based on updated costs incurred for FY 2002 discharges to the estimated PPS payments that would have been made for those same FY 2002 discharges under the new LTCH PPS payment methodology.

Therefore, in the absence of the Medicare, Medicaid, and SCHIP Extension Act of 2007, we would have proposed to employ the general methodology we have just described to determine: (1) Whether the one-time adjustment available under § 412.523(d)(3) of the regulations should be proposed for RY 2009, and (2) if such adjustment should be proposed, the actual proposed adjustment factor. In this proposed rule, we would revise the current language of § 412.523(d)(3) of the regulations to conform more specifically with this preferred methodology. At the time of the final LTCH PPS rule in 2002, we described the nature of the one-time adjustment in very general terms. Specifically, that section currently provides the following:

> The Secretary reviews payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates on or before July 1, 2008 so that the effect of any significant difference between actual payments and estimated payments for the first year of the long term care hospital prospective payment system is not perpetuated in the prospective payment rates for future years.

Our policy objective in providing for this one-time budget neutrality adjustment has always been to ensure that computations based on the earlier, necessarily limited (but at that time best available) data available at the inception of the LTCH PPS would not be built permanently into the rates if data available at a later date could provide more accurate results. Prior to the thorough analysis we conducted in preparation for this rate year, we had believed that the only appropriate method for meeting this policy objective involved employing actual payment data from the first year of payment under the LTCH. As we have just discussed, we believe after a thorough evaluation of the currently available data in the light of this policy objective, that the most appropriate methodology for evaluating an adjustment to the original budget neutrality adjustment does not involve comparing the payments estimated in the original calculations against the ''actual payments * * * for the first year,'' strictly speaking. Rather, as just

discussed, considerations of consistency and other factors suggest that the most appropriate comparison would employ an estimate of FY 2003 LTCH PPS payments based on the same set of discharges (from FY 2002) which are the basis for the best estimate of what would have been paid in FY 2003 under the TEFRA system. As a result of this methodological determination, under the broad authority of section 123 of the BBRA, as amended by section 307(b) of BIPA, to make appropriate adjustments to the LTCH PPS, we are proposing to revise § 412.523(d)(3) to reflect the preferred methodology more clearly. As we have discussed previously, we are also proposing to revise that section of the regulations to correspond with the requirements of section 114(c)(4) of the Medicare, Medicaid, and SCHIP Extension Act of 2007. Specifically, we are now proposing to revise § 412.523(d)(3) of the regulations to read as follows:

> The Secretary reviews payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates no earlier than December 29, 2010, so that the effect of any significant difference between the data used in the original computations and more recent data to determine budget neutrality is not perpetuated in the prospective payment rates for future years.

Our proposed revision to § 412.523(d)(3) of the regulations would continue to provide that the Secretary may make a one-time adjustment to the LTCH PPS rates in order to ensure that any ''significant'' difference is not perpetuated in the LTCH PPS rates for future years. The regulation does not specifically define what constitutes a significant difference for this purpose. In the absence of section 114(c)(4) of the Medicare, Medicaid, and SCHIP Extension Act of 2007, we would have proposed to consider as ''significant'' any difference greater than or equal to a 0.25 percentage point difference between the original budget neutrality calculations and budget neutrality calculations based on the more recent data now available. This threshold avoids making an adjustment to account for very minor deviations between earlier and later estimates of budget neutrality. It is also consistent with thresholds that we have employed for similar purposes in prospective payment systems. For example, under the capital IPPS, we make a forecast error correction in the framework used to update the capital Federal rate if a previous forecast of input prices varies by at least a 0.25 percentage point from actual input price changes (72 FR 47425). We do not believe that we should treat differences greater than or equal to 0.25 percent as not ''significant,'' since the effect of any difference will be magnified as the rates are updated each year.

As discussed previously, absent the requirement of section 114(c)(4) of the Medicare, Medicaid and SCHIP Extension Act of 2007, we would have proposed to use FY 2002 LTCH costs as a basis for estimating FY 2003 LTCH TEFRA payments in evaluating whether to propose a one-time prospective adjustment under § 412.523(d)(3). We also would have proposed to update the FY 2002 costs for inflation to FY 2003 by our Office of the Actuary's current estimate of the actual increase in the excluded hospital market basket from FY 2002 to FY 2003 of 4.2 percent. This updated amount would serve as the proxy for actual FY 2003 TEFRA costs in the proposed budget neutrality computation for purposes of § 412.523(d)(3). We estimated FY 2003 LTCH TEFRA payments using a methodology that is similar in concept to the methodology we used to estimate FY 2003 LTCH total payments under the TEFRA system when we determined the initial standard Federal rate in the August 30, 2002 final rule (67 FR 56030 through 56033). We also made modifications to the methodology we initially used to estimate FY 2003 LTCH TEFRA payments because we are using data from a later period, as discussed in greater detail below. In general, we estimated total payments under the TEFRA payment system using the following steps:

- Estimate each LTCH's payment per discharge for inpatient operating costs under the TEFRA system for FY 2003;
- Estimate each LTCH's payment per discharge for capital-related costs for FY 2003; and
- Sum each LTCH's estimated operating and capital payment per case to determine its estimated total FY 2003 TEFRA payment system payment per discharge.

We discuss each of these steps in greater detail below.

The first step in the process of estimating total FY 2003 payments under the TEFRA payment system is to estimate each LTCH's payment per discharge for inpatient operating costs under the TEFRA. Until FY 1998, the payment methodology for inpatient operating costs under the TEFRA payment system was a relatively straightforward process. First, we calculated a target amount by dividing the Medicare total inpatient operating costs in a base year by the number of Medicare discharges. The provider's TEFRA target amount was then updated by a rate-of-increase percentage (§ 413.40(c)(3) of the regulations, as established by the Congress, to determine the TEFRA target amount for the subsequent cost reporting period (§ 413.40(c)(4)(i), (ii)). For any particular cost reporting period, the Medicare payment for inpatient operating costs would be the lesser of the hospital's reasonable costs, or the updated target amount multiplied by the number of Medicare discharges during the cost reporting period, that is, the TEFRA ceiling (§ 413.40(a)(3)).

The methodology described above, broadly speaking, is the general approach that we would use to arrive at an estimate of what Medicare payments for hospital inpatient operating costs would have been in FY 2003 under the TEFRA payment system: each LTCH's FY 2003 target amount would be calculated by updating its estimated FY 2002 target amount per discharge by the full market basket percentage increase. The sum of all LTCH payments for operating costs (TEFRA target amount multiplied by Medicare discharges), bonus or relief payments, continuous improvement bonus payments, and payments for capital-related costs yields, in general, the estimate of what total Medicare payments to LTCHs would be in FY 2003 under the TEFRA payment system if the LTCH PPS had not been implemented.

However, because sections 4413 through 4419 of the BBA of 1997, section 122 of the BBRA of 1999, and section 307(a)(1) of the BIPA made numerous changes to the TEFRA payment system, we had to make variations in the method described above to arrive at the estimate of FY 2003 payments for the inpatient operating costs of each LTCH under the TEFRA system, depending on the participation date of the hospital. Specifically, we must make the requisite computations differently for two classes of hospitals, ''existing'' hospitals and ''new'' hospitals. (A detailed explanation of the provisions affecting LTCHs, established by each of the amendments, is found in the August 30, 2002 final rule that implemented the LTCH PPS (67 FR 55959).) We discuss below these specific BBA, BBRA, and BIPA changes, and their impact on the calculations of estimated FY 2003 TEFRA payments for ''existing'' and ''new'' hospitals. As discussed in greater detail below, we would employ two approaches to estimate Medicare payments under the TEFRA system to LTCHs in FY 2003, depending on how these changes in calculating TEFRA

payments, as established by the amendments, applied to each LTCH.

The first set of changes that we had to take into account were included in the BBA. The BBA made significant changes to the TEFRA payment methodology starting with cost reporting periods beginning on or after October 1, 1997. While the changes were applicable to three types of PPS-excluded providers (rehabilitation hospitals and units, psychiatric hospitals and units, and LTCHs), the following discussion will address the provisions of the amendments as they relate to LTCHs.

The first change to consider under BBA is section 4414 that established caps on the TEFRA target amounts for cost reporting periods beginning on or after October 1, 1997, for LTCHs that were paid as IPPS excluded providers prior to that date. The cap was determined by taking the 75th percentile of target amounts for cost reporting periods ending in FY 1996 for each class of provider (rehabilitation hospitals and units, psychiatric hospitals and units, and LTCHs), updating that amount by the market basket percentage increases to FY 1998, and applying it to the cost reporting period beginning on or after October 1, 1997 (62 FR 46018). The cap calculated for FY 1998 was updated by the applicable market basket percentages to determine the cap amounts for cost reporting periods beginning during FY 1999 through 2002. Providers subject to the 75th percentile cap were paid the lesser of their inpatient operating costs or the TEFRA target amount, which was limited by the 75th percentile cap amount (67 FR 55959). In addition, section 4411 of the BBA established a formula for calculating the update factor for FY 1999 through FY 2002 that was dependent on the relationship of a provider's inpatient operating costs to its ceiling amount based on data from the most recently available cost report. Section 121 of the BBRA provided that the 75th percentile cap amount should be wage adjusted starting with cost reporting periods beginning on or after October 1, 1999 and before October 1, 2002.

The second change that we had to take into account was section 4415 of the BBA. This provision revised the percentage factors used to determine the amount of bonus and relief payments for LTCHs meeting specific criteria. If a provider's net inpatient operating costs did not exceed the hospital's ceiling, a bonus payment was made to the LTCH (§ 413.40(d)(2) of the regulations). The bonus payment was the lower of 15 percent of the difference between the hospital's inpatient operating costs and the ceiling, or 2 percent of the ceiling. In addition, relief payments were made to providers whose net inpatient operating costs were greater than 110 percent of the ceiling (or the adjusted ceiling, if applicable). These relief payments were the lower of 50 percent of the costs in excess of 110 percent of the ceiling or (or the adjusted ceiling, if applicable) or 10 percent of the ceiling (or adjusted ceiling, if applicable) (§ 413.40(d)(3)(ii) of the regulations).

The third change was an additional incentive established by section 4415 of the BBA, the continuous improvement bonus payment (CIB) for providers meeting certain conditions and that kept their costs below the target amount. Eligibility for the CIB required that a provider had three full cost reporting periods as an IPPS-excluded provider prior to the applicable fiscal year (62 FR 46019). To qualify for a CIB, a provider's operating costs per discharge in the current cost reporting period had to be lower than the least any of the following: its target amount; its expected costs, that is, the lower of its target amount or inpatient operating costs per discharge from the previous cost reporting period, updated; or, its trended costs, that is, the inpatient operating costs per discharge from its third full cost reporting period, updated by the market basket percentage increase to the applicable fiscal year (62 FR 46019, § 413.40(d)(5)(ii)(B) of the regulations). For providers with their third or subsequent full cost reporting period ending in FY 1996, trended costs are the lower of their inpatient operating costs per discharge or target amount updated forward to the current year (§ 413.40(d)(5)(ii)(A) of the regulations). The CIB payment equals the lesser of 50 percent of the amount by which the operating costs were less than expected costs, or, 1 percent of the ceiling (§ 413.40(d)(4) of the regulations). Section 122 of the BBRA increased this percentage for LTCH's for FY 2001 to 1.5 percent of the ceiling, and beginning in FY 2002, to 2 percent of the ceiling (§ 413.40(d)(4)(ii) and (iii) of the regulations). The increase in the CIB percentage is not to be accounted for in the development and implementation of the LTCH PPS in accordance with section 307(a)(2) of BIPA.

The fourth change that we had to take into account was section 4416 of the BBA which significantly revised the payment methodology for ''new'' IPPS-excluded providers. This provision applies to three classes of providers—psychiatric hospitals and units, rehabilitation hospitals and units, and LTCHs—that were not paid as excluded hospitals prior to October 1, 1997. The payment amount for a new provider for the first 12-month cost reporting period is the lower of its Medicare inpatient operating cost per discharge or a limit based on 110 percent of the national median of target amounts for the same class of hospital for cost reporting periods ending in FY 1996, updated by the market basket percentage increases to the applicable period, and wage-adjusted. The payment limit in the second 12-month cost reporting period is the same 110 percent limit as for the first year (§ 413.40(f)(2)(ii) of the regulations). A new provider's target amount would be established in its third cost reporting period by updating the amount paid in its second cost reporting period by the market basket percentage increase for hospitals and hospital units excluded from the IPPS, applicable to the specific year, as published annually in the **Federal Register**, which then becomes the target amount for its third cost reporting period. The target amount for the fourth and subsequent cost reporting periods is determined by updating the target amount from the previous cost reporting period by the applicable market basket percentage increase.

Finally, two provisions under BIPA were directed specifically at LTCHs. Section 307(a)(1) of BIPA provided a 2 percent increase to the wage-adjusted 75th percentile cap for existing LTCHs for cost reporting periods beginning in FY 2001, and a 25 percent increase to the target amount for LTCHs, subject to the increased 75th percentile cap. However, it is important to note that in accordance with section 307(a)(2) of BIPA, the 2 percent increase to the 75th percentile cap and the 25 percent increase to the target amount were not to be taken into account in the development and implementation of the LTCH PPS.

In order to determine what a LTCH's estimated payments would be under TEFRA in FY 2003, we utilized cost report data for LTCHs from the Hospital Cost Reporting Information System (HCRIS) for FYs 1999 through 2002. In addition, to determine whether a LTCH is ''new,'' the certification date for each LTCH was obtained from the On-line Survey & Certification Automated Reporting (OSCAR) file. Based on the certification date, a LTCH would either be a ''new'' LTCH, meaning a LTCH that was not paid as an excluded hospital prior to October 1, 1997, or, an ''existing'' LTCH, meaning a LTCH that was paid as an excluded hospital prior to October 1, 1997. This could include a LTCH that was certified as an LTCH on or after October 1, 1997, but was

previously paid as another type of IPPS-excluded provider prior to October 1, 1997. Our approach to estimating Medicare payments in FY 2003 under the TEFRA payment system varied somewhat, depending on whether an LTCH was ''existing'' or ''new'' (as discussed in greater detail below).

Based on all these statutory changes mentioned above, the first step would be to estimate FY 2003 inpatient operating payments under the TEFRA system for ''existing'' LTCHs. ''Existing'' LTCHs are those receiving payment as IPPS-excluded providers in cost reporting periods prior to FY 1998. These LTCHs were subject to the 75th percentile cap on their target amounts. While section 307(a)(1) of BIPA provided for a 2 percent increase to the 75th percentile cap amount for LTCH's for cost reporting periods beginning in FY 2001 and a 25 percent increase to the target amount for cost reporting periods beginning in FY 2001 (subject to the limiting or cap amount determined under section 1886(b)(3)(H) of the Act), section 307(a)(2) of BIPA precluded accounting for these increases in developing the LTCH PPS. In addition, section 122 of the BBRA increased the CIB payment percentage to 1.5 percent for FY 2001 and 2.0 percent for FY 2002 (§ 413.40(d)(4)(ii) and (iii) of the regulations). But these increases, also, are not to be accounted for in the development and implementation of the LTCH PPS in accordance with section 307(a)(2) of BIPA. Therefore, to ensure that these increases would be excluded from the computations, as required by the statute, we estimated an existing LTCH's FY 2003 target amount by starting with the hospital's target amount from the FY 2000 cost report, the year prior to when these increases were effective. Target amounts and payments for FY 2003 were simulated using the FY 2000 target amount in the hospital's cost report and updating the target amount for each subsequent cost reporting period by the applicable rate-of-increase percentage as described in § 413.40(c)(3)(vii) through FY 2002. The target amount from FY 2002 is updated by the forecasted market basket percentage increase of 3.5 percent to arrive at the FY 2003 target amount (§ 413.40(c)(3)(viii)). (Note, the forecasted increase in the excluded hospital market basket for FY 2003 of 3.5 percent was the applicable rate-of-increase percentage used to update TEFRA target amounts in accordance with § 413.40(c)(3)(viii) in the FY 2003 IPPS final rule (August 1, 2002, 67 FR 50289)). Based on more recent data, our Office of the Actuary currently estimates an increase of 4.2 percent in the excluded hospital market basket for FY 2003, which we used to update LTCHs' FY 2002 costs to FY 2003, as described below.) In a small number of cases where FY 2002 operating cost data were not available, we used operating cost data from the most recent year available and trended it forward to FY 2003. In addition, we estimated FY 2003 bonus or relief payments without the inclusion of the 2 percent and 25 percent increases to the cap amount and target amount, respectively, and without the 1.5 percent and 2.0 percent increases to the CIB payments, consistent with section 307(a)(2) of BIPA as discussed above.

In addition, since comparisons are made between the target amount and Medicare inpatient operating costs to determine bonus or relief payments, we estimated FY 2003 operating costs for each LTCH by updating its FY 2002 operating costs by the actual percentage increase in operating costs for PPS-excluded hospitals from FY 2002 to FY 2003 (4.2 percent, as determined by OACT). The 3.5 percent market basket increase used to update the TEFRA target amounts from FY 2002 to FY 2003 was the forecast increase used at that time based on the most recent information from OACT, at that time. However, because we now have more recent data available for estimating the market basket increase for IPPS-excluded hospitals from FY 2002 to FY 2003, we are using that more recent data which OACT currently estimates that the IPPS-excluded hospital market basket increase from FY 2002 to FY 2003 is 4.2 percent. As discussed earlier, we estimated the FY 2003 operating costs using FY 2002 costs rather than use the costs reported on the FY 2003 cost report.

The 75th percentile cap for LTCHs for FY 2002, without the 2 percent and 25 percent increases to the cap and target amount, respectively, was $30,783 for the wage-index adjusted labor-related share, and $12,238 for the nonlabor-related share. If a LTCH's costs and hospital-specific target amount were above the 75th percentile cap, Medicare's payment under the TEFRA system would be the wage-index adjusted cap amount. If under our payment model a LTCH's estimated FY 2002 TEFRA payment would have been limited by the wage-adjusted 75th percentile cap in FY 2002, that amount would be updated by the forecasted market basket percentage increase (of 3.5 percent) to FY 2003 to determine the LTCH's FY 2003 target amount that was used to estimate its TEFRA payment amount for FY 2003.

The second approach that we used to estimate FY 2003 hospital operating payments under the TEFRA system applied to ''new'' LTCHs. A ''new'' LTCH is one that was first paid as an IPPS excluded hospital on or after October 1, 1997. For a ''new'' LTCH, payment in the hospital's first 12-month cost reporting period is the lower of its Medicare net inpatient operating costs per discharge or the wage-adjusted 110 percent median amount determined for that particular year (§ 413.40(f)(2)(ii) of the regulations). For the hospital's second 12-month cost reporting period, payment is the lower of their costs, or the same 110 percent median amount that was used in the first cost reporting period, that is, it is not updated. The hospital's ''target amount'' is established in the third cost reporting period by updating the per discharge amount that was paid in the prior cost reporting period by the estimated market basket percentage increase for hospitals and hospital units excluded from the IPPS, applicable to the specific year, as published annually in the **Federal Register**. Therefore, if the LTCH was paid its costs in the previous cost reporting period because costs were lower than the 110 percent median amount, the hospital's cost per discharge for the second cost reporting period is updated and becomes the target amount for the hospital's third cost reporting period. Target amounts for subsequent cost reporting periods are determined by updating the previous year's target amount by the applicable market basket percentage increase.

New LTCHs with their first 12-month cost reporting period beginning in FY 1998, would have had a target amount calculated under section 1886(b)(7)(A)(ii) of the Act, in FY 2000. Therefore, as with the ''existing'' LTCH's, in estimating the FY 2003 target amount, we used the target amount from the FY 2000 cost report for those LTCHs and update that target amount by the applicable estimated market basket percentage increases as published annually in the **Federal Register** for the IPPS final rule, without the 25 percent increase, to FY 2003. For LTCH's with their first 12-month cost reporting period beginning in FY 1999, we used the lower of their costs or target amount from their FY 2000 cost report, and updated that amount by the applicable estimated market basket percentage increase to establish the target amount in FY 2001, without the 25 percent increase. From this point, we would continue to update that target amount by the estimated market basket

percentage increases to FY 2003. It is necessary to compute an estimated target amount for LTCHs that are ''new'' in FY 1999 in order to eliminate the potential inclusion of the increase to the target amounts provided for by section 307(a)(1) of BIPA (consistent with the statute).

The 25 percent increase (under section 307(a) of the BIPA) to the target amount was not an issue for LTCH's with their first 12-month cost reporting period beginning in FYs 2000, 2001, and 2002 because they would not have a ''target amount'' based on sections 1886(b)(7)(A)(ii) of the Act, in FY 2001. Rather, for these LTCHs, we would have proposed to determine the estimated payment amount for their first 12-month cost reporting period by looking at their certification date from the OSCAR file, the applicable 110 percent median amount (adjusted by their wage-index) and their costs from the applicable cost report, and then proceed in accordance with the policy in § 413.40(f)(2)(ii) of the regulations, to arrive at estimated FY 2003 TEFRA payments.

In addition to the TEFRA payments for operating costs, and any bonus or relief payments made, we also added $10 million as an estimate of the CIB payments that would have been made in FY 2003 under the TEFRA payment system. We estimated this payment by using actual CIB payments from the cost reports for FYs 1999 and 2000 as they would not include the statutory increases to the target amount as discussed above, and recalculated CIB payments for FYs 2001 and 2002 based on cost report data. Based on these historical CIB payments, we estimated that CIB payments in FY 2003 would have been approximately $10 million. Just as the TEFRA payments and bonus and relief payments had to be recalculated in particular years to eliminate percentage increases that were not to be included in our budget neutrality calculations, it was necessary to recalculate the CIB payments in FYs 2001 and 2002 to eliminate the percentage increases to these payments as provided for under section 122 of BBRA, but not to be accounted for in the development of the LTCH in accordance with section 307(a)(2) of BIPA.

As we discussed above, the second step in estimating total payments under the TEFRA payment system is to estimate each LTCH's payment per discharge for capital-related costs. Under the TEFRA system, in accordance with section 1886(g) of the Act, Medicare allowable capital costs are paid on a reasonable cost basis. Therefore, we took each LTCH's payment for capital-related costs directly from the FY 2002 cost report and updated it for inflation using the FY 2003 capital excluded hospital market basket estimate of 0.7 percent, consistent with the methodology used in the August 30, 2002 final rule (67 FR 56032) in which we established the initial standard Federal rate. Thus, we determined capital-related costs per case using capital cost data from Worksheets D, Parts I and II, and total Medicare discharges for the cost reporting period from worksheet S–3. (We note that since payments for capital-related costs are on a reasonable-cost basis, capital payments were the same for ''existing'' and ''new'' LTCHs.)

Once we have estimated total TEFRA payments as the sum of each LTCH's estimated operating and capital payment per case, it is necessary to estimate FY 2003 payments under the LTCH PPS. As we discussed above, in evaluating the one-time prospective adjustment at § 412.523(d)(3), we believe that the best approach is to use FY 2002 LTCH claims data as a proxy for estimating FY 2003 LTCH PPS payments. We note (as explained below) that we used the same FY 2002 LTCH MedPAR data that was used to develop the FY 2004 LTC–DRG relative weights in the FY 2004 IPPS final rule (68 FR 45376). As we discussed in that final rule, there is a data problem with the FY 2002 claims data for LTCHs where multiple bills for the stay were submitted. Specifically, given the long stays at LTCHs, some providers had submitted multiple bills for payment under the reasonable cost-based reimbursement system for the same stay. In certain LTCHs, hospital personnel apparently reported a different principal diagnosis on each bill since, under the reasonable cost-based (TEFRA) reimbursement system, payment was not dependent upon principal diagnosis, as it is under a DRG-based PPS system. As a result of this billing practice, we discovered that only data from the final bills were being extracted for the MedPAR file. Therefore, it was possible that the original MedPAR file was not receiving the correct principal diagnosis. In that same IPPS final rule, we discussed how we addressed this problem in the LTCH FY 2002 MedPAR data when we used that data to determine the FY 2004 LTC–DRG relative weights. As stated above, for the evaluation of the one-time budget neutrality adjustment at § 412.523(d)(3) in this proposed rule, we used the same ''corrected'' FY 2002 LTCH MedPAR data that was used to develop the FY 2004 LTC–DRG relative weights. For the reader's benefit, we are providing a summary of how we addressed the multiple bill problem in the FY 2002 LTCH MedPAR data below. As we explained in the FY 2004 IPPS final rule (68 FR 45376), we addressed this problem by identifying all LTCH cases in the FY 2002 MedPAR file for which multiple bills were submitted. For each of these cases, beginning with the first bill and moving forward consecutively through subsequent bills for that stay, we recorded the first unique diagnosis codes up to 10 and the first unique procedure codes up to 10. We then used these codes to appropriately group each LTCH case to a LTC–DRG for FY 2004.

We estimated FY 2003 LTCH PPS payments using the same general methodology that we used to estimate FY 2003 payments under the LTCH PPS (without a budget neutrality adjustment) when we determined the initial standard Federal rate in the August 30, 2002 final rule (67 FR 56032). Specifically, we estimated FY 2003 LTCH PPS payments for each LTCH by simulating payments on a case-by-case basis by applying the final FY 2003 payment policies established in the August 30, 2002 final rule that implemented the LTCH PPS (67 FR 55954) based on the LTCH case-specific discharge information from the FY 2002 MedPAR files (as explained above), and we also used LTCH provider-specific data from the FY 2003 provider specific file (PSF), as these were the data used by FIs to make LTCH payments during the first year of the LTCH PPS (FY 2003). We used the FY 2003 LTC–DRG Grouper (Version 22.0) software program, relative weights, and average length of stay (see 67 FR 55979 through 55995); we made adjustments for differences in area wage levels established for FY 2003 as set forth at § 412.525(c) using the appropriate phase-in wage index values and cost-of-living for Alaska and Hawaii as set forth at § 412.525(b) established for FY 2003 (see 67 FR 56015 through 56020 and 56022, respectively); we made adjustments for short-stay outlier cases based on the method for determining payment applicable for discharges occurring during FY 2003 in accordance with § 412.529(c)(1) (see 67 FR 55975 and 55995–56002); and we included additional payments for high cost outlier cases as initially implemented in accordance with former § 412.525(a) for determining payments for discharges occurring in FY 2003 and the FY 2003 fixed-loss amount of $24,450 (see 67 FR 56023). (We note that correctly billed interrupted stay cases under § 412.531 are single LTCH cases in the MedPAR files, and therefore, we estimated a

single LTCH PPS payment for those cases.) For purposes of this calculation, we simulated case-by-case payments for each LTCH as if it were paid based on 100 percent of the standard Federal rate in FY 2003 rather than the transition blend methodology set forth at § 412.533. To determine total estimated PPS payments for all LTCHs, we summed the individual estimated LTCH PPS payments for each LTCH.

The next step we did to evaluate a potential one-time adjustment under § 412.523(d)(3) was to determine a case-weighted average estimated TEFRA payment, consistent with the methodology used when we determined the initial standard Federal rate in the August 30, 2002 final rule (68 FR 56032). This step is necessary in order to determine if there is any difference between estimated total TEFRA payments and estimated LTCH PPS payments in FY 2003. Each LTCH's estimated total FY 2003 TEFRA payment per discharge was determined by summing its estimated FY 2003 operating and capital payments under the TEFRA payment system based on FY 2002 cost report data (as described above), and dividing that amount by the number of discharges from the FY 2002 cost report data. Next, we determined each LTCH's average estimated TEFRA payment weighted for its number of discharges in the FY 2002 MedPAR file (for the purpose of estimating FY 2003 LTCH PPS payments, as discussed above) by multiplying its average estimated total TEFRA payment per discharge by its number of discharges in the FY 2002 MedPAR file. We then estimated total case-weighted TEFRA payments by summing each LTCH's (MedPAR) case-weighted estimated FY 2003 TEFRA payments. This estimated FY 2003 total TEFRA payment is compared to the estimated FY 2003 total LTCH PPS payment in order to determine whether a one-time budget neutrality adjustment would be appropriate. (As discussed in greater detail above, we are determining both estimated total FY 2003 TEFRA payments and estimated total FY 2003 LTCH PPS payments based on FY 2002 cost report and claims data, respectively.) Adjusting our estimate of FY 2003 TEFRA payments for the number of discharges that we are using to estimate FY 2003 LTCH PPS payments ensures that the comparison of estimated aggregate FY 2003 TEFRA payments to estimated aggregate FY 2003 LTCH PPS payments is based on the same number of LTCH discharges.

Using the methodology and data described above, we have calculated that estimated FY 2003 LTCH PPS payments are approximately 2.5 percent higher than estimated payments to the same LTCHs in FY 2003 if the LTCH PPS had not been implemented (that is, estimated total FY 2003 TEFRA payments). This analysis was based on approximately 91,300 LTCH cases for 250 LTCHs. As discussed above, we would have proposed that any difference greater than or equal to 0.25 percentage points ''significant'' for purposes of determining whether the one-time budget neutrality adjustment provided under § 412.523(d)(3) may be warranted. Although we project that estimated FY 2003 LTCH PPS payments are approximately 2.5 percent higher than estimated FY 2003 TEFRA payments, reducing the standard Federal rate by 2.5 percent would not ''maintain budget neutrality'' for FY 2003 (that is, estimated FY 2003 LTCH PPS payments would not be equal to estimated FY 2003 TEFRA payments) because a considerable number of LTCH discharges are projected to have received a LTCH PPS payment in FY 2003 based on the estimated cost of the case (rather than a payment based on the standard Federal rate) under the payment adjustment for short-stay outlier (SSO) cases at § 412.529. Specifically, our payment data indicate that nearly 20 percent of estimated FY 2003 LTCH PPS payments are SSO payments that were paid based on estimated cost and not based on the LTCH PPS standard Federal rate. These SSO cases that receive a payment based on the estimated cost of the case are generally unaffected by any changes to the Federal rate because the estimated cost of the case is determined by multiplying the Medicare allowable charges by the LTCH's cost-to-charge ratio (see § 412.529(d)(2)). In other words, if we were to reduce the Federal rate by 2.5 percent, estimated total FY 2003 LTCH PPS payments would still be greater than estimated total FY 2003 TEFRA payments, and therefore would not be budget neutral. This is because the estimated LTCH PPS payments for those SSO cases that in FY 2003 were estimated to have been paid 120 percent of the estimated cost of the case generally are not affected (that is, in this case, not lowered) by any budget neutrality factor that would be applied to the standard Federal rate since those payments are not derived from the Federal rate (as explained above). Therefore, it would be necessary to propose to offset the standard Federal rate by a factor that is larger than 2.5 percent in order to ensure that estimated total FY 2003 LTCH PPS payments would be equal to estimated total FY 2003 TEFRA payments in order to ''maintain budget neutrality.'' To determine the necessary adjustment factor that would need to be applied to the standard Federal rate in order to ''maintain budget neutrality,'' we simulated FY 2003 LTCH PPS payments using the same payment simulation model discussed above (that we used to estimate FY 2003 LTCH PPS payments without a budget neutrality factor). Using iterative payment simulations using the data from the 250 LTCHs in our database, we determined that a factor of 0.9625 (that is, approximately 3.75 percent (rather than 2.5 percent)) would need to be applied to the standard Federal rate in order to make estimated total FY 2003 LTCH PPS payments equal to estimated total FY 2003 TEFRA payments.

In the absence of section 114(c)(4)of the Medicare, Medicaid, and SCHIP Extension Act of 2007, we would have proposed to employ this methodology in determining whether it would have been appropriate to propose a one-time budget neutrality adjustment. As the discussion above indicates, that analysis suggests that an adjustment of 3.75 percent to the standard Federal rate would have been warranted. We expect to address the issue again when it is closer to the time section 114(c)(4) of the MMSEA permits us to implement a one-time adjustment under § 412.523(d)(3). In the meantime, we welcome comments on the methodology that we have described. We would take these comments into account in proposing to implement a one-time budget neutrality adjustment on or after December 29, 2010. As noted above, we will respond to any comments on our proposed changes to the methodology for the one-time budget neutrality adjustment and proposed change to implement the requirements of section 114(c)(4) of Public Law 110–173.

E. Proposed Standard Federal Rate for the 2008 LTCH PPS Rate Year

1. Background

At § 412.523(c)(3)(ii), for LTCH PPS rate years beginning RY 2004 through RY 2006, we updated the standard Federal rate by a rate increase factor to adjust for the most recent estimate of the increases in prices of an appropriate market basket of goods and services for LTCHs. We established the policy of annually updating the standard Federal rate because at that time we believed that was the most appropriate method for updating the LTCH PPS standard Federal rate annually for years after FY 2003. When we moved the date of the annual update of the LTCH PPS from

October 1 to July 1 in the RY 2004 LTCH PPS final rule (68 FR 34138), we revised § 412.523(c)(3)accordingly. At that time, we believed that was the most appropriate method for updating the LTCH PPS standard Federal rate annually for years after RY 2004.

In the RY 2007 LTCH PPS final rule (71 FR 27818), we explained that rather than solely using the most recent estimate of the LTCH PPS market basket as the basis of the update factor for the Federal rate for RY 2007, we believed it was appropriate to adjust the Federal rate to account for the changes in coding practices (rather than patient severity) as indicated by our ongoing monitoring activities. We established at § 412.523(c)(3)(iii) that the update to the standard Federal rate for the 2007 LTCH PPS rate year was zero percent, based on the most recent estimate of the LTCH PPS market basket at the time which was offset by an adjustment to account for changes in case-mix in prior periods due to changes in coding practices rather than increased patient severity in FY 2004. Therefore, effective from July 1, 2006 through June 30, 2007, the standard rate was $38,086.04 (71 FR 27818). For the following year, we also considered changes in coding practices (rather than patient severity) in establishing the update to the Federal rate for the 2008 LTCH PPS rate year. In the RY 2008 final rule (72 FR 26887 through 27890), we adjusted the Federal rate based on the most recent estimate of market basket (3.2 percent) and an adjustment to account for changes in coding practices (2.49 percent) in FY 2005. Accordingly, we established at § 412.523(c)(3)(iv) that the update to the standard Federal rate for RY 2008 was 0.71 percent. Consequently, in the RY 2008 final rule, we established the LTCH PPS standard Federal rate, effective from July 1, 2007 through June 30, 2008, of $38,356.45 (see 72 FR 26890).

As stated in section I.A. of this preamble, section 114(e)(1) of the Medicare, Medicaid, and SCHIP Extension Act of 2007, enacted on December 29, 2007 revises the base rate for RY 2008. Specifically, section 114(e)(1) of Public Law 110–173 adds a new subsection to the Act at 1886(m)(2), which provides that the base rate for RY 2008 ''shall be the same as the base rate for discharges for the hospital occurring during the rate year ending in 2007.'' In addition, section 114(e)(2) of Public Law 110–173 indicates that section 1886(m)(2) of the Act ''shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008'' (that is, the first 9 months of RY 2008). We note that the statute uses the term ''base rate,'' which is an undefined term in § 1886(m) of the ACT and in 42 CFR Part 412, subpart O. We are interpreting that term to mean the standard Federal rate because we believe the Congress meant to eliminate the 0.71 percent update from the RY 2008 standard Federal rate.

If the term ''base rate'' used in the statute refers to the standard Federal rate, then the standard Federal rate for RY 2008 would be the same as the standard Federal rate for RY 2007 and the 0.71 percent update finalized in the RY 2008 final rule would be reversed. We do not believe that the term ''base rate'' could refer to the ''unadjusted rate'' (that is, to determine the standard Federal rate for any given rate year, the previous year's standard Federal rate, referred herein as the ''unadjusted rate'', is updated by the current year's update factor.) If the interpretation of ''base rate'' is the ''unadjusted rate,'' it would render meaningless the provision at the section 114(e)(1) of the MMSEA and Congress does not legislate a nullity. The provision would be meaningless under such an interpretation because even though the unadjusted rate for RY 2008 would be the same as the unadjusted rate for RY 2007, this unadjusted rate must still be updated by 0.71 percent, and doing so would result in the same standard Federal rate for RY 2008 as was adopted in the RY 2008 final rule. (The unadjusted rate must be updated by 0.71 percent in order to determine the standard Federal rate because it is the standard Federal rate that is the basis for Federal prospective LTCH PPS payments.) Consequently, LTCH PPS payments would be unaffected by section 114(e)(1) of the Medicare, Medicaid, and SCHIP Extension Act of 2007. We explain below why RY 2008 LTCH PPS payments would be unaffected by section 114(e)(1) of Public Law 110–173 if ''base rate'' means ''unadjusted rate.'' Specifically, if ''base rate'' means the ''unadjusted rate,'' the RY 2007 ''base rate'' (that is, $38,086.04) would be the same as the standard Federal rate for RY 2007 (also $38,086.04) since we established a zero percent update for RY 2007. Consequently, if ''base rate'' is interpreted to mean ''unadjusted rate,'' the ''unadjusted rate'' for RY 2008 ($38,086.04) would be the same as the RY 2007 ''unadjusted rate'' ($38,086.04). The RY 2008 ''unadjusted rate'' of $38,086.04 would subsequently be updated by the 0.71 percent update factor finalized in the RY 2008 final rule, resulting in a standard Federal rate for RY 2008 of $38,356.45, which is the same standard Federal rate that was actually finalized in the RY 2008 final rule and which would continue to be the standard Federal rate for RY 2008 even if section 114(e)(1) of MMSEA had not been enacted. Since as we noted above, Congress does not legislate a nullity, we therefore believe that the term ''base rate'' used in section 114(e)(1) of MMSEA refers to the standard Federal rate and not the ''unadjusted rate.'' In subsequent sections of this preamble, we shall be using the term standard Federal rate instead of ''base rate'' when referencing the provision in section 114(e)(1) of MMSEA in order to avoid further confusion. As noted above, the standard Federal rate for RY 2007 was $38,086.04 (71 FR 27818).

2. Proposed Standard Federal Rate for the 2009 LTCH PPS Rate Year

In the RY 2008 LTCH PPS final rule (72 FR 26890), we established a standard Federal rate of $38,356.45 for the 2008 LTCH PPS rate year that was based on the best available data and policies established in that final rule. As discussed above, the Medicare, Medicaid, and SCHIP Extension Act of 2007, enacted on December 29, 2007, revises the standard Federal rate for RY 2008 while specifying that this rate ''shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008'' (that is, the first 9 months of RY 2008). Specifically, section 114(e)(1) of MMSEA provides that under the new 1886(m)(2) to the Act the standard Federal rate for RY 2008 shall be the same as the standard Federal rate for RY 2007 (which shall not apply to discharges occurring before April 1, 2008). Thus, the standard Federal rate for RY 2008 will be $38,086.04 (the same as standard Federal rate for 2007). In this proposed rule, consistent with our historical practice, we are proposing to update the standard Federal rate from the previous year ($38,086.04) to determine the proposed standard Federal rate for RY 2009. Under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, we are proposing an annual update to the standard Federal rate for the proposed 15-month 2009 rate year based on the most recent LTCH PPS market basket estimate of 3.5 percent, as discussed above in section IV.C. of the preamble of this proposed rule, and an adjustment of 0.9 percent to account for the increase in case-mix in a prior period (FY 2006) that resulted from changes in coding practices rather than an increase in patient severity.

As we discussed in greater detail in the RY 2007 and RY 2008 LTCH PPS

final rules (71 FR 27819 through 27827 and 72 FR 26887 through 26890, respectively), while we continue to believe that an update to the LTCH PPS Federal rate year should be based on the most recent estimate of the LTCH PPS market basket, we believe it is appropriate that the rate be offset by an adjustment to account for any changes in coding practices that do not reflect increased patient severity. Such an adjustment protects the integrity of the Medicare Trust Funds by ensuring that the LTCH PPS payment rates better reflect the true costs of treating LTCH patients (71 FR 27819 through 27827).

We continue to believe that a proposed update to the LTCH PPS Federal rate year should be based on the most recent estimate of the LTCH PPS market basket, offset if appropriate by an adjustment to account for changes in coding practices that do not reflect increased patient severity. Furthermore, in the FY 2008 IPPS final rule, we did not finalize the proposed case-mix budget neutrality factor for the adoption of the severity adjusted MS–LTC–DRG patient classification system to the FY 2008 MS–LTC–DRG relative weights. We stated in that rule that since we have an established mechanism to adjust prospectively LTCH payments to account for the effect of changes in coding from a previous year and documentation which is based on actual LTCH data, and because at the time of the final rule we were unable to determine an appropriate adjustment factor applicable to LTCHs, we believed it was appropriate to continue using the established process rather than making a prospective adjustment based on an estimate of projected LTCH specific case-mix change due to improved coding and documentation. We also stated that consistent with past LTCH payment policy, we could propose to make future adjustments to account for improvements in coding and documentation that do not reflect real changes in case mix during these years that we are implementing MS–LTC–DRGs. We also stated in that final rule that we continue to believe more accurate and complete documentation and coding will occur, and that we will continue to monitor LTCHs' response to the MS–LTC–DRG transition and would propose an adjustment factor to LTCHs to account prospectively for coding and documentation changes if CMS is able to estimate an appropriate adjustment factor applicable to LTCHs. In determining the proposed update to the standard Federal rate for the 2009 LTCH PPS rate year, we performed a CMI analysis using the most recent available LTCH claims data (FY 2006 MedPAR files) and estimated the observed CMI change for FY 2006 to be 1.9 percent (based on the most recent available LTCH case-mix data from FY 2005 compared to FY 2006). We continue to believe, as discussed and for the same reasons stated in the RY 2008 final rule (72 FR 26888 through 26890), that it is appropriate to utilize the estimate of real CMI increase of 1.0 percent, based on the well-established RAND study referred to in the RY 2008 final rule, as the proxy for the portion of the observed 1.9 percent CMI increase from FY 2005 to FY 2006 that represents real CMI changes for use in determining the proposed RY 2009 Federal rate update. (A more detailed discussion on the use of the RAND study estimate for real CMI change can be found in the RY 2008 final rule appearing in the **Federal Register** on May 11, 2007. (72 FR 26887 through 26890)). Accordingly, we believe that 0.9 percent (1.9 − 1.0 = 0.9) of the observed 1.9 percent CMI increase from FY 2005 to FY 2006 reflects CMS increase that is due to changes in coding practices (rather than patient severity).

At this time, the most recent estimate of the LTCH PPS market basket is 3.5 percent as discussed above in section IV.C.2. of this proposed rule. We are proposing to update the standard Federal Rate for RY 2009 based on the full LTCH PPS market basket estimate of 3.5 percent and a proposed adjustment to account for the increase in case-mix in the prior period (FY 2006) that resulted from changes in coding practices of 0.9 percent. Therefore, the proposed update factor to the standard Federal rate for RY 2009 is 2.6 percent (3.5 − 0.9 = 2.6). That is, under the broad authority conferred upon the Secretary under the BBRA and the BIPA, we are proposing to specify under § 412.523(c)(3)(v), that, for discharges occurring on or after July 1, 2008 and on or before September 30, 2009, the standard Federal rate from the previous year would be updated by 2.6 percent. In determining the proposed standard Federal rate for RY 2009, we are applying the proposed 2.6 percent update to the RY 2008 Federal rate of $38,086.04), which is the same standard Federal rate for discharges occurring during the rate year ending in 2007, consistent with section 114(e)(1) of the Medicare, Medicaid, and SCHIP Extension Act of 2007. Consequently, the proposed standard Federal rate for RY 2009 would be $39,076.28.

We also propose that if more recent data becomes available (such as a more recent estimate of the LTCH PPS market basket), we would use that data, if appropriate, to determine the update to the standard Federal rate for the RY 2009 final rule, and thus, the Federal rate update noted in the proposed regulation text at § 412.523(c)(3)(v) could change.

F. Calculation of Proposed LTCH Prospective Payments for the 2009 LTCH PPS Rate Year

1. Proposed Adjustment for Area Wage Levels

a. Background

Under the authority of section 123 of the BBRA as amended by section 307(b) of the BIPA, we established an adjustment to the LTCH PPS Federal rate to account for differences in LTCH area wage levels at § 412.525(c). The labor-related share of the LTCH PPS Federal rate, currently estimated by the FY 2002-based RPL market basket (as discussed in greater detail in section IV.C.1. of this preamble), is adjusted to account for geographic differences in area wage levels by applying the applicable LTCH PPS wage index. The applicable LTCH PPS wage index is computed using wage data from inpatient acute care hospitals without regard to reclassification under sections 1886(d)(8) or 1886(d)(10) of the Act.

As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56015), when the LTCH PPS was implemented, we established a 5-year transition to the full wage adjustment. The wage index adjustment was completely phased-in beginning with cost reporting periods beginning in FY 2007. Therefore, for cost reporting periods beginning on or after October 1, 2006, the applicable LTCH wage index values are the full (five-fifths) LTCH PPS wage index values calculated based on acute-care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. For additional information on the phase-in of the wage index adjustment under the LTCH PPS, refer to the August 30, 2002 LTCH PPS final rule (67 FR 56017 through 56019) and the RY 2008 LTCH PPS final rule (72 FR 26891).

b. Proposed Updates to the Geographic Classifications/Labor Market Area Definitions

(1) Background

As discussed in the August 30, 2002 LTCH PPS final rule, which implemented the LTCH PPS (67 FR 56015 through 56019), in establishing an adjustment for area wage levels under § 412.525(c), the labor-related portion of a LTCH's Federal prospective payment is adjusted by using an appropriate wage index based on the

labor market area in which the LTCH is located. In the RY 2006 LTCH PPS final rule (70 FR 24184 through 24185), in regulations at § 412.525(c), we revised the labor market area definitions used under the LTCH PPS effective for discharges occurring on or after July 1, 2005 based on the Office of Management and Budget's (OMB's) Core Based Statistical Area (CBSA) designations based on 2000 Census data. We made this revision because we believe that those new CBSA-based labor market area definitions will ensure that the LTCH PPS wage index adjustment most appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. As set forth in existing § 412.525(c)(2), a LTCH's wage index is determined based on the location of the LTCH in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C). An urban area under the LTCH PPS is currently defined at § 412.64(b)(1)(ii)(A) and (B). Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of an urban area.

We note that these are the same CBSA-based designations implemented for acute care hospitals under the IPPS at § 412.64(b) effective October 1, 2004 (69 FR 49026 through 49034). For further discussion of the labor market area (geographic classification) definitions currently used under the LTCH PPS, see the RY 2006 LTCH PPS final rule (70 FR 24182 through 24191).

(2) Proposed Update to the CBSA-based Labor Market Area Definitions

On December 18, 2006, OMB announced the inclusion of two new CBSAs and the revision of designations for six areas (OMB Bulletin No. 07–01). This OMB bulletin is available on the OMB Web site at *http://www.whitehouse.gov/omb/bulletins/fy2007/b07–01.pdf*. The two new CBSAs outlined in this bulletin are as follows:

- Lake Havasu-Kingman, Arizona (CBSA code 29420). This CBSA comes from Mohave County, Arizona.
- Palm Coast, Florida (CBSA code 37380). This CBSA comes from Flager County, Florida.

The six revised CBSA designations outlined in this bulletin are as follows:

- Mauldin, South Carolina and Easley, South Carolina qualify as new principal cities of the Greenville-Mauldin-Easley, South Carolina CBSA (CBSA code 24860).
- Conway, Arkansas qualifies as a new principal city of the Little Rock-North Little Rock-Conway, Arkansas CBSA (CBSA code 30780).
- Goleta, California qualifies as a new principal city of the Santa Barbara-Santa Maria-Goleta, California CBSA (CBSA code 42060).
- Franklin, Tennessee qualifies as a new principal city of the Nashville-Davidson-Murfreesboro-Franklin, Tennessee CBSA (CBSA code 34980).
- Fort Pierce, Florida no longer qualifies as a principal city of the Port St. Lucie-Fort Pierce, Florida CBSA; the new designation is Port St. Lucie, Florida CBSA (CBSA code 38940).
- Essex County, Massachusetts Metropolitan Division was renamed as the Peabody, Massachusetts Metropolitan Division, which changed the CBSA code from 21604 to 37764.

We note that these six revised CBSA designations made in OMB Bulletin No. 07–01 do not change the composition (constituent counties) of the affected CBSAs; they only revise the CBSA titles (and the CBSA code for the CBSA that consists of Essex County, MA).

In this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA, as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, we are proposing to apply these changes to the current CBSA-based labor market area definitions and geographic classifications used under the LTCH PPS effective for discharges occurring on or after July 1, 2008. We believe these revisions to the LTCH PPS CBSA-based labor market area definitions, which are based on the most recent available data, would ensure that the LTCH PPS wage index adjustment most appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. (We note that we are currently not aware of any LTCHs located in the two new proposed CBSAs (that is, proposed CBSA 29420 and proposed CBSA 37380), and as discussed above, the six proposed revisions to the CBSA designations would only revise the CBSA titles (and the CBSA code for the CBSA that consists of Essex County, MA).) Accordingly, the proposed RY 2009 LTCH PPS wage index values presented in Tables 1 and 2 in the Addendum of this proposed rule were calculated based on the proposed revisions to the CBSA-based labor market area definitions described above. We also note that these revisions to the CBSA-based designations were adopted under the IPPS effective beginning October 1, 2007 (72 FR 47308 through 47309).

(3) Clarification of New England Deemed Counties

We are also taking this opportunity to address the change in the treatment of ''New England deemed counties'' (that is, those counties in New England listed in § 412.64(b)(1)(ii)(B) that were deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983) that was made in the FY 2008 IPPS final rule with comment period. These counties include the following: Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island. Of these five ''New England deemed counties,'' three (York County, Sagadahoc County, and Newport County) are also included in metropolitan statistical areas defined by OMB and are considered urban under both the current IPPS and LTCH PPS labor market area definitions in § 412.64(b)(1)(ii)(A) (they would also be urban under the proposed conforming changes to § 412.503). The remaining two, Litchfield County and Merrimack County, are geographically located in areas that are considered rural under the current IPPS (and LTCH PPS) labor market area definitions (however, they have been previously deemed urban under the IPPS in certain circumstances as discussed below).

In the FY 2008 IPPS final rule with comment period (72 FR 47337 through 47338), § 412.64(b)(1)(ii)(B) was revised such that the two ''New England deemed *counties*'' that are still considered rural by OMB (Litchfield county, CT and Merrimack county, NH) are no longer considered urban effective for discharges occurring on or after October 1, 2007, and therefore, are considered rural in accordance with § 412.64(b)(1)(ii)(C). However, for purposes of payment under the IPPS, acute-care hospitals located within those areas are treated as being reclassified to their deemed urban area effective for discharges occurring on or after October 1, 2007 (see 72 FR 47337 through 47338). (We note that the LTCH PPS does not provide for such geographic reclassification (67 FR 56019 through 56020)). Also in the FY 2008 IPPS final rule with comment period (72 FR 47338), we explained that we have limited this policy change for the ''New England deemed counties'' only to IPPS hospitals, and any change to non-IPPS provider wage indices would be addressed in the respective payment system rules. Accordingly, as stated above, we are taking this opportunity to clarify the treatment of ''New England

deemed counties'' under the LTCH PPS in this proposed rule.

As discussed above, under existing § 412.525(c)(2), a LTCH's wage index is determined based on the location of the LTCH in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C). Under existing § 412.525(c)(2), an urban area under the LTCH PPS is currently defined at § 412.64(b)(1)(ii)(A) and (B), and a rural area is defined as any area outside of an urban area in § 412.64(b)(1)(ii)(C).

Historical changes to the labor market area/geographic classifications and annual updates to the wage index values under the LTCH PPS have been made effective July 1 each year. When we established the most recent LTCH PPS payment rate update, effective for LTCH discharges occurring on or after July 1, 2007 through June 30, 2008, we considered the ''New England deemed counties'' (including Litchfield county, CT and Merrimack county, NH) as urban for RY 2008 (in accordance with the definitions of urban and rural stated in the RY 2008 LTCH PPS final rule (72 FR 26891) and as evidenced by the inclusion of Litchfield county as one of the constituent counties of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT), and the inclusion of Merrimack county as one of the constituent counties of urban CBSA 31700 (Manchester-Nashua, NH)). (See 72 FR 27004 and 27008, respectively).

As noted above, existing § 412.525(c)(2) indicates that the terms ''rural'' and ''urban'' as areas are defined according to the definitions of those terms in § 412.64(b)(1)(ii)(A) through (C). As Litchfield county, CT and Merrimack county, NH would be considered rural areas in accordance with our regulations at (§ 412.525(c)(2), these two counties will be ''rural'' under the LTCH PPS effective with the next update of the LTCH PPS payment rates, which will be July 1, 2008 (under the LTCH PPS effective for discharges on or after July 1, 2008, Litchfield County, CT and Merrimack County, NH are not urban under § 412.64(b)(1)(ii)(A–B) and therefore are rural under § 412.64(b)(1)(ii)(c)). (We note that Litchfield and Merrimack counties will also be rural under our proposed § 412.503, discussed in greater detail below, that would incorporate the existing definitions of ''urban'' and ''rural'' areas.) Therefore, Litchfield county, CT and Merrimack county, NH will be considered ''rural'' effective for LTCH PPS discharges occurring on or after July 1, 2008, and will no longer be considered as being part of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT) and urban CBSA 31700 (Manchester-Nashua, NH), respectively. We note that currently we are not aware of any LTCHs located in either Litchfield county, CT or Merrimack county, NH. We also note that this policy is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the LTCH PPS. In addition, as discussed above, in this section, effective for discharges on or after July 1, 2008, § 412.64(b)(1)(ii)(B) is no longer applicable under the LTCH PPS.

(4) Proposed Codification of the Definitions of Urban and Rural Under 42 CFR Part 412 Subpart O

Under the current regulations at § 412.525(c), the labor-related portion of the LTCH PPS Federal rate is adjusted to account for geographical differences in the area wage levels using an appropriate wage index to reflect the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area) of the hospital compared to the national average level of hospital wages and wage-related costs annually. Currently, the application of the wage index under existing § 412.525(c)(2) is made on the basis of the location of the facility in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C) (in 42 CFR Part 412 subpart D).

In light of regulatory construct discussed above where § 412.525(c) indicated that the terms ''rural area'' and ''urban area'' as defined according to the definitions of those terms'' under the IPPS in 42 CFR Part 412 subpart D, we believe it may be administratively simpler to have the LTCH PPS urban and rural labor market area definitions self-contained in (§ 412.503) 42 CFR Part 412 subpart O rather than cross-referring to the definitions of urban and rural in the IPPS regulations in 42 CFR Part 412, Subpart D. This approach is similar to the change we made in § 412.525(a) for high cost outliers and § 412.529 for short-stay outliers in the FY 2007 IPPS final rule when we embedded within Subpart O the regulatory provisions concerning the determination of cost-to-charge ratios (CCRs) and the reconciliation of outlier payments (71 FR 48115 through 48122). Under the broad authority of § 123 of the BBRA as amended by § 307(b) of BIPA we are proposing to codify in § 412.503 the definitions for ''urban area'' and ''rural area.'' The proposed definitions for ''urban area'' and ''rural area'' in § 412.503 would incorporate the provisions of § 412.62(f)(1)(ii) and (f)(1)(iii) as well as § 412.64(b)(1)(ii)(A) through (C). Furthermore, since, as explained above in section IV.F.1.b.3., the definition of ''urban area'' at § 412.64(b)(1)(ii)(B) is no longer applicable under the LTCH PPS effective for discharges occurring on or after July 1, 2008, and therefore, the only remaining definition of ''urban area'' will be that of a Metropolitan Statistical Area (MSA) as defined by the Executive Office of Management and Budget. (*See* 72 FR 47337 through 47338). Thus, we omit the language of § 412.64(b)(1)(ii)(B) from the proposed definition of ''urban area'' that would be applicable to discharges occurring on or after July 1, 2008 in proposed 412.503. We, however, included the language from § 412.64(b)(1)(ii)(A) in the proposed definition of ''urban area'' that would be applicable to discharges occurring on or after July 1, 2008 in proposed 412.503. For the reason just described, we note that the proposed definitions of ''urban'' and ''rural'' that would be effective for discharges occurring on or after July 1, 2008 (in subparagraph (3) in the both the proposed definition of ''rural area'' and the proposed definition of ''urban area'') vary slightly from the wording in the current regulations at § 412.64(b)(1)(ii)(A) through (C); however, substantively the definitions are the same. We believe that the slight difference in the wording of 412.503 more precisely conveys the treatment of New England deemed counties under the LTCH PPS, as discussed above. As a conforming change, we are also proposing to replace the cross-references to § 412.62(f)(1)(iii) and § 412.64(b)(1)(ii)(A) through (C) in § 412.525(c) with references to the proposed definitions of ''urban area'' and ''rural area'' at § 412.503. Accordingly, we are proposing to revise § 412.525(c) to specify that the application of the LTCH PPS wage index would be made on the basis of the location of the LTCH in an urban or rural area as defined in proposed § 412.503. As discussed in section VI.G.3. of this proposed rule, we are also proposing to make conforming changes to the regulations governing short-stay outlier payments (at § 412.529) and the special payment provisions for co-located LTCHs (at § 412.534) and free-standing LTCHs (at § 412.536), which refer to the definition of urban and rural under the LTCH PPS.

c. Proposed Labor-Related Share

In the August 30, 2002 LTCH PPS final rule (67 FR 56016), we established a labor-related share of 72.885 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits,

professional fees, postal services, and all other labor-intensive services) and capital costs of the excluded hospital with capital market basket based on FY 1992 data. We did not revise the labor-related share in RYs 2004 through 2006 while we conducted further analysis to determine the most appropriate methodology and data for determining the labor-related share under the LTCH PPS (70 FR 24182). After our research into the labor-related share methodology was complete, we revised the labor-related share under the LTCH PPS in the RY 2007 final rule (71 FR 27829). Specifically, beginning in RY 2007, we established a labor-related share based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, postal services, and all other labor-intensive services) and capital costs of the RPL market basket based on FY 2002 data, as it is the best available data that reflect the cost structure of LTCHs.

Consistent with our historical practice, the labor-related share currently used under the LTCH PPS is determined by identifying the national average proportion of operating costs and capital costs that are related to, influenced by, or vary with the local labor market. Accordingly, in the RY 2008 LTCH PPS final rule (72 FR 26892), we updated the LTCH PPS labor-related share to 75.788 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) and capital costs of the RPL market basket based on FY 2002 data from the first quarter of 2007.

As discussed in section IV.C.2. of this preamble, we now have data from the 4th quarter of 2007 (with history through the 3rd quarter of 2007) available for determining the labor-related share of the FY 2002-based RPL market basket. Based on this more recent data, in this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, consistent with our historical practice of determining the labor-related share by identifying the national average proportion of operating costs and capital costs that are related to, influenced by, or varies with the local labor market, we are proposing to revise the LTCH PPS labor-related share from 75.788 percent to 75.920 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) and capital costs of the FY 2002-based RPL market basket from the fourth quarter of 2007, as shown in Table 1. The proposed labor-related share is the sum of the relative importance of wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of the capital share from an appropriate market basket.

In this proposed rule, for RY 2009, we are proposing to use the FY 2002-based RPL market basket costs based on data from the fourth quarter of 2007 to determine the labor-related share for the LTCH PPS effective for discharges occurring on or after July 1, 2008 and before September 30, 2009, as this is the most recent available data. The proposed labor-related share for RY 2009 LTCH PPS would continue to be the sum of the relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2002) and the (15-month) 2009 LTCH PPS rate year. (As discussed in greater detail above in section IV.B. of this proposed rule, we are proposing to move the LTCH PPS annual payment rate year beginning July 1st to a rate year beginning October 1st and have a 15-month rate year for 2009 (that is, July 1, 2008 through September 30, 2009). Accordingly, we are proposing to use the 15-month RY 2009 RPL market basket, discussed above, to determine the proposed labor-related share for RY 2009 in this proposed rule. Consistent with our historical practice of using the best data available, if more recent data are available to determine the labor-related share of the RPL market basket (used under the LTCH PPS), we propose to use it for determining the labor-related share for the 2009 LTCH PPS rate year in the final rule.

Based on the most recent available data, we are proposing that the sum of the relative importance for the 2009 LTCH PPS rate year for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) would be 71.965, as shown in Table 1. The portion of capital that is influenced by the local labor market is still estimated to be 46 percent, which is the same percentage used when we established the current labor-related share in the RY 2008 LTCH PPS final rule. Since, based on the most recent available data, the relative importance for capital would be 8.597 percent of the FY 2002-based RPL market basket for the 2009 LTCH PPS rate year, we are proposing to multiply the estimated portion of capital influenced by the local labor market (46 percent) by the relative importance for capital (8.597 percent) to determine the proposed labor-related share of capital for the 2009 LTCH PPS rate year. The result would be 3.955 percent (0.46 x 8.597 percent), which we would add to the proposed 71.965 percent for the operating cost amount to determine the proposed total labor-related share for the 2009 LTCH PPS rate year. Thus, based on the latest available data, we are proposing to use a labor-related share of 75.920 percent (71.965 percent + 3.955 percent) under the LTCH PPS for the 2009 LTCH PPS rate year. As noted above in this section, this proposed labor-related share is determined using the same methodology as employed in calculating the current LTCH labor-related share (72 FR 26892) and the labor-related shares used under the IRF PPS and IPF PPS, which also use the RPL market basket.

Table 1 shows the 2008 LTCH PPS rate year relative importance labor-related share of the FY 2002-based RPL market basket (established in the RY 2008 LTCH PPS final rule) and the proposed 2009 LTCH PPS rate year relative importance labor-related share of the FY 2002-based RPL market basket.

TABLE 1.—RY 2008 LABOR-RELATED SHARE RELATIVE IMPORTANCE AND PROPOSED RY 2009 LABOR-RELATED SHARE RELATIVE IMPORTANCE OF THE FY 2002-BASED RPL MARKET BASKET

Cost category	RY 2008 relative importance*	Proposed RY 2009 relative importance
Wages and Salaries	52.588	52.830
Employee Benefits	14.127	14.079
Professional fees	2.907	2.907
All other labor intensive services	2.145	2.149

TABLE 1.—RY 2008 LABOR-RELATED SHARE RELATIVE IMPORTANCE AND PROPOSED RY 2009 LABOR-RELATED SHARE RELATIVE IMPORTANCE OF THE FY 2002-BASED RPL MARKET BASKET—Continued

Cost category	RY 2008 relative importance*	Proposed RY 2009 relative importance
Subtotal	71.767	71.965
Labor share of capital costs	4.021	3.955
Total Labor-related share	75.788	75.920

* As established in the RY 2008 LTCH PPS final rule (72 FR 26892).
** Other labor intensive services includes landscaping services, services to buildings, detective and protective services, repair services, laundry services, advertising, auto parking and repairs, physical fitness facilities, and other government enterprises.

d. Proposed Wage Index Data

Historically, under the LTCH PPS, we have established LTCH PPS wage index values calculated from acute care IPPS hospital wage data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56019), since hospitals that are excluded from the IPPS are not required to provide wage-related information on the Medicare cost report. Therefore, we would need to establish instructions for the collection of this LTCH data as well as develop some type of application and determination process before a geographic reclassification adjustment under the LTCH PPS could be implemented. Thus, the wage adjustment established under the LTCH PPS is based on a LTCH's actual location without regard to the urban or rural designation of any related or affiliated provider. Acute care hospital inpatient wage index data are also used to establish the wage index adjustment used in other Medicare PPSs, such as the IRF PPS, IPF PPS, HHA PPS, and SNF PPS.

In the RY 2008 LTCH PPS final rule (72 FR 26893), we established LTCH PPS wage index values for the RY 2008 calculated from the same data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2003) used to compute the FY 2007 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act because that was the best available data at that time. The LTCH PPS wage index values applicable for discharges occurring on or after July 1, 2007 through June 30, 2008 are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum to the RY 2008 LTCH PPS final rule (72 FR 26996 through 27019).

In this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, we are proposing that, for the RY 2009, the same data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2004) used to compute the FY 2008 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act would be used to determine the applicable wage index values under the LTCH PPS because these data (FY 2004) are the most recent complete data. (For information on the data used to compute the FY 2008 IPPS wage index refer to the FY 2008 IPPS final rule with comment period (72 FR 47308 through 47309, 47315)). We are proposing to continue to use IPPS wage data as a proxy to determine the proposed LTCH wage index values for RY 2009 because both LTCHs and acute-care hospitals are required to meet the same certification criteria set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program and they both compete in the same labor markets, and therefore, experience similar wage-related costs. We note that the IPPS wage data used to determine the proposed RY 2009 LTCH wage index values reflects our policy that was adopted under the IPPS beginning in FY 2008 that apportions the wage data for multicampus hospitals' located in different labor market areas (CBSAs) to each CBSA where the campuses are located (see the FY 2008 IPPS final rule with comment period (72 FR 47317 through 47320)). For the proposed RY 2009 LTCH PPS wage index, which is computed from IPPS wage data submitted by hospitals for cost reporting periods beginning in FY 2004 (just like the FY 2008 IPPS wage index), we allocated salaries and hours to the campuses of two multicampus hospitals with campuses that are located in different labor areas, one in Massachusetts and another in Illinois. Thus, the proposed RY 2009 LTCH PPS wage index values for the following CBSAs are affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974) and Lake County-Kenosha County, IL-WI (CBSA 29404) (refer to Table 1 in the Addendum of this proposed rule). Furthermore, the proposed RY 2009 LTCH PPS wage index values presented in this proposed rule were computed consistent with the urban and rural geographic classifications (labor market areas) discussed above in section IV.F.1.b. of this proposed rule and consistent with pre-reclassified IPPS wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments under the LTCH PPS). Specifically, we note that the wage data of the IPPS hospitals located in Litchfield county, CT, and Merrimack county, NH, were included in the calculation of the proposed RY 2009 LTCH PPS statewide rural wage index values for Connecticut and New Hampshire, respectively (rather than urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT) and urban CBSA 31700 (Manchester-Nashua, NH), respectively). In addition, the proposed RY 2009 wage index reflects our proposals (discussed in greater detail below) to establish wage index values in urban and rural areas in which there are no IPPS wage data from which to compute a wage index value under our methodology described above. As noted above, the IPPS wage data we are proposing to use are the same FY 2004 acute care hospital inpatient wage data that were used to compute the FY 2008 wage index currently used under the IPPS.

In this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, we are also proposing to establish a policy for determining LTCH

PPS wage index values for labor market areas in which there is no IPPS hospital wage data from which to compute a wage index value under our methodology described above. Currently, there are no LTCHs located in labor areas where there is no IPPS hospital wage data (or IPPS hospitals). However, we believe it is appropriate to establish a methodology for determining LTCH PPS wage index values for these areas in the event that in the future a LTCH should open in one of those areas. Thus, any LTCH that would open in area in which there is no IPPS wage data for which to compute a wage index based on our established methodology would have a wage index value assigned to them for determining their LTCH PPS payments. Under this proposal, each year we would determine a wage index value for any area in which there is no IPPS wage data based on the proposed methodologies described below. As IPPS hospitals may open or close at any time, the number of areas without any IPPS wage data may change from year to year, and even when an IPPS hospital does open in area where there are currently no IPPS hospitals, because there is a lag-time between the time a hospital opens or becomes an IPPS provider and when the hospital's cost report wage data are available to include in calculating the area wage index (see 72 FR 47323), we believe it is appropriate to establish a methodology for determining LTCH PPS wage index values for these areas, if necessary. Our proposed policies for determining LTCH PPS wage index values for areas with no IPPS hospital wage data are consistent with the policies that have been established under other Medicare post-acute care PPSs, such as SNF and HHA, as well as the IPPS.

The first situation for which we are proposing to establish a policy for determining a LTCH PPS wage index value is for urban CBSAs with no IPPS wage data. As discussed above, as IPPS wage data is dynamic, it is possible that urban areas without IPPS wage data will vary in the future. Consistent with the policy established under other PPSs, such as the HHA (70 FR 40795 and 71 FR 65892 through 65893), we are proposing to use an average of all of the urban areas within the State to serve as a reasonable proxy for determining the LTCH PPS wage index for an urban area without specific IPPS hospital wage index data. We believe that an average of all of the urban areas within the State would be a reasonable proxy for determining the LTCH PPS wage index for an urban area in the State with no wage data because it is based on pre-reclassified IPPS wage data, it is easy to evaluate, and it uses the most geographically similar relative wage-related costs data available. (Our rationale for using pre-reclassified IPPS wage data is discussed above in the beginning of this section.) Based on the FY 2004 IPPS wage data that we are proposing to use to determine the proposed RY 2009 LTCH PPS wage index (discussed above), there is no IPPS wage data for the urban area of Hinesville-Fort Stewart, GA (CBSA 25980). Consistent with our proposal for determining a LTCH PPS wage index value for urban areas with no IPPS wage data, in this proposed rule, we calculated the proposed wage index value for RY 2009 for CBSA 25980 as the average of the wage index values for all of the other urban areas within the State of Georgia (that is, CBSAs 10500, 12020, 12060, 12260, 15260, 16860, 17980, 19140, 23580, 31420, 40660, 42340, 46660 and 47580) (refer to Table 1 of the Addendum of this proposed rule). (As noted above, there are currently no LTCHs located in CBSA 25980). We believe that this policy could be readily applied to other urban CBSAs (besides CBSA 25980) that lack IPPS wage data (possibly due to acute-care hospitals converting to a different provider type that does not submit the appropriate wage data). However, if the proposed policy is adopted, we may re-examine the application of this proposed policy should a similar situation arise in the future.

The other situation for which we are proposing to establish a policy for determining a LTCH PPS wage index value is for rural areas with no IPPS wage data. As discussed above, as IPPS wage data is dynamic, it is possible that rural areas without IPPS wage data will vary in the future. Consistent with the policy established under other PPSs, such as the HHA (71 FR 65905 through 65906) and the IPPS (72 FR 47323 through 47324), we are proposing to use the unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties of the State to serve as a reasonable proxy in determining the LTCH PPS wage index for a rural area without specific IPPS hospital wage index data. For this purpose, we would define ''contiguous'' as sharing a border. We are not able to apply a similar averaging in rural areas with no wage data as we proposed above for urban areas with no wage data because there is no rural hospital data available for averaging on a state-wide basis. We believe that using an unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties of the State would be a reasonable proxy for determining the wage index for rural areas in a State with no wage data because it is based on pre-reclassified IPPS wage data, it is easy to evaluate, and it uses the most geographically similar relative wage-related costs data available. (Our rationale for using pre-reclassified IPPS wage data is discussed above in the beginning of this section.)

Based on the FY 2004 IPPS data that we are proposing to use to determine the proposed RY 2009 LTCH PPS wage index (discussed above), rural Massachusetts (CBSA code 11) does not have any IPPS wage data. Consistent with our proposal for determining a LTCH PPS wage index value for rural areas with no IPPS hospital wage data, in this proposed rule, we determined the proposed wage index value for RY 2009 rural Massachusetts by computing the unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties in that State. Specifically, in the case of Massachusetts, the entire rural area consists of Dukes and Nantucket counties. We determined that the borders of Dukes and Nantucket counties are ''contiguous'' with Barnstable County, MA, and Bristol County, MA. Therefore, the proposed RY 2009 LTCH PPS wage index value for rural Massachusetts would be computed as the unweighted average of the proposed RY 2009 wage indexes for Barnstable county and Bristol county (refer to Tables 1 and 2 of the Addendum of this proposed rule). (As noted above, there are currently no LTCHs located in rural Massachusetts.) We believe that this proposed policy could be readily applied to other rural areas (besides Massachusetts) that lack IPPS wage data (possibly due to acute-care hospitals converting to a different provider type that does not submit the appropriate wage data). However, if the proposed policy is adopted, we may re-examine the application of this proposed policy should a similar situation arise in the future.

The proposed RY 2009 LTCH wage index values that would be applicable for LTCH discharges occurring on or after July 1, 2008 through September 30, 2009, are presented in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum of this proposed rule. As discussed in greater detail above in section IV.B. of this preamble, we are proposing to move the LTCH PPS annual payment rate update cycle from July 1 to October 1 and to have a 15-month rate year for 2009 (that is, July 1, 2008 through September 30, 2009). Therefore, we note that if our proposal

to move the LTCH PPS annual payment rate update cycle is finalized, the next proposed update to the LTCH wage index values would be effective for discharges occurring on or after October 1, 2009 (FY 2010). In addition, as noted above, the wage index adjustment under the LTCH PPS was completely phased in beginning with cost reporting periods beginning in FY 2007 (that is, for cost reporting periods beginning on or after October 1, 2006). Therefore, for LTCH PPS discharges occurring during RY 2009, the labor related portion of the standard Federal rate will be adjusted by the applicable full (five fifths) proposed RY 2009 LTCH PPS wage index value. (As noted above, the proposed RY 2009 LTCH PPS wage index values are shown in Tables 1 and 2 of the Addendum to this proposed rule).

2. Proposed Adjustment for Cost-of-Living in Alaska and Hawaii

In the August 30, 2002 final rule (67 FR 56022), we established, under § 412.525(b), a COLA for LTCHs located in Alaska and Hawaii to account for the higher costs incurred in those States. In the RY 2008 LTCH PPS final rule (72 FR 26894), for RY 2008, we established a COLA to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in Table 3 of that same final rule.

Similarly, in this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, for RY 2009 we are proposing a COLA to payments to LTCHs located in Alaska and Hawaii by multiplying the proposed standard Federal payment rate by the proposed factors listed below in Table 2 because these are currently the most recent available data. These proposed factors are obtained from the U.S. Office of Personnel Management (OPM) and are currently also used under the IPPS (72 FR 47422). In addition, we propose that if OPM releases revised COLA factors before March 1, 2008, we would use them for the development of LTCH PPS payments for RY 2009 and publish those revised COLA factors in the final rule.

TABLE 2.—PROPOSED COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS FOR THE 2009 LTCH PPS RATE YEAR

Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road ..	1.24
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.24
City of Juneau and 80-kilometer (50-mile) radius by road	1.24
All other areas of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.17
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

3. Proposed Adjustment for High-Cost Outliers (HCOs)

a. Background

Under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA, in the regulations at § 412.525(a), we established an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be incurred when treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients. We set the outlier threshold before the beginning of the applicable rate year so that total estimated outlier payments are projected to equal 8 percent of total estimated payments under the LTCH PPS. Outlier payments under the LTCH PPS are determined consistent with the instructions issued for the IPPS outlier policy.

Under § 412.525(a) (in conjunction with the revised definition of ''LTC–DRG'' at § 412.503), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the MS–LTC–DRG plus a fixed-loss amount. Specifically, in accordance with § 412.525(a)(3) (in conjunction with the revised definition of ''LTC–DRG'' at § 412.503), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the MS–LTC–DRG and the fixed-loss amount). The fixed-loss amount is the amount used to limit the loss that a hospital will incur under the outlier policy for a case with unusually high costs. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. Under the LTCH PPS HCO policy, the LTCH's loss is limited to the fixed-loss amount and a fixed percentage (currently 80 percent) of costs above the outlier threshold (LTCH DRG payment plus the fixed loss amount). The fixed percentage of costs is called the marginal cost factor. We calculate the estimated cost of a case by multiplying the Medicare allowable covered charge by the overall hospital cost-to-charge ratio (CCR).

Under the LTCH PPS, we determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the LTCH will receive any additional payments. We calculate the fixed-loss amount by estimating aggregate payments with and without an outlier policy. The fixed-loss amount will result in estimated total outlier payments being projected to be equal to 8 percent of projected total LTCH PPS payments. Currently, MedPAR claims data and CCRs based on data from the most recent provider specific file (PSF) (or to the applicable Statewide average CCR if a LTCH's CCR data are faulty or unavailable) are used to establish a fixed-loss threshold amount under the LTCH PPS.

b. Cost-to-Charge Ratios (CCRs)

The following is a discussion of cost-to-charge ratios (CCRs) used in determining payments for high cost and short-stay outlier cases under the LTCH PPS, at § 412.525(a) and § 412.529, respectively. Although this section is specific to high cost outlier cases, because CCRs and the policies and methodologies pertaining to them are used in determining payments for both high cost and short-stay outlier cases, (as explained below), we are discussing the determination of CCRs under the LTCH PPS for both of these type of cases simultaneously. In section IV.G. of this proposed rule, which discusses short-stay outlier (SSO) cases, we refer the reader to this section of the preamble for a complete discussion on the determination of CCRs.

In determining both high-cost outlier payments (at § 412.525(a)) and short-stay outlier payments (at § 412.529), we calculate the estimated cost of the case by multiplying the LTCH's overall CCR by the Medicare allowable charges for the case. In general, we use the LTCH's overall CCR, which is computed based on either the most recently settled cost report or the most recent tentatively settled cost report, whichever is from

the latest cost reporting period, in accordance with § 412.525(a)(4)(iv)(B) and § 412.529(c)(4)(iv)(B) for high cost outliers and SSOs, respectively. (We note that in some instances we use an alternative CCR, such as the statewide average CCR in accordance with the regulations at § 412.525(a)(4)(iv)(C) and § 412.529(c)(4)(iv)(C), or a CCR that is specified by CMS or that is requested by the hospital under the provisions of the regulations at § 412.525(a)(4)(iv)(A) and § 412.529(c)(4)(iv)(A).) Under the LTCH PPS, a single prospective payment per discharge is made for both inpatient operating and capital-related costs. Therefore, we compute a single ''overall'' or ''total'' LTCH-specific CCR based on the sum of LTCH operating and capital costs (as described in Chapter 3, section 150.24, of the Medicare Claims Processing Manual (CMS Pub. 100–4)) as compared to total charges. Specifically, a LTCH's CCR is calculated by dividing a LTCH's total Medicare costs (that is, the sum of its operating and capital inpatient routine and ancillary costs) by its total Medicare charges (that is, the sum of its operating and capital inpatient routine and ancillary charges).

Generally, a LTCH is assigned the applicable statewide average CCR if, among other things, a LTCH's CCR is found to be in excess of the applicable maximum CCR threshold (that is, the LTCH CCR ceiling). This is because CCRs above this threshold are most likely due to faulty data reporting or entry, and, therefore, these CCRs should not be used to identify and make payments for outlier cases. Such data are clearly errors and should not be relied upon. Thus, under our established policy, generally, if a LTCH's calculated CCR is above the applicable ceiling, the applicable LTCH PPS statewide average CCR is assigned to the LTCH instead of the CCR computed from its most recent (settled or tentatively settled) cost report data.

In the FY 2008 IPPS final rule with comment period, in accordance with § 412.525(a)(4)(iv)(C)(*2*) for high-cost outliers and § 412.529(c)(4)(iv)(C)(*2*) for short-stay outliers, using our established methodology for determining the LTCH total CCR ceiling, based on IPPS total CCR data from the March 2007 update to the Provider-Specific File (PSF), we established a total CCR ceiling of 1.284 under the LTCH PPS effective October 1, 2007 through September 30, 2008. (For further detail on our methodology for annually determining the LTCH total CCR ceiling, we refer readers to the FY 2007 IPPS final rule (71 FR 48119 through 48121) and the FY 2008 IPPS final rule with comment period (72 FR 47403 through 47404).)

Our general methodology established for determining the statewide average CCRs used under the LTCH PPS is similar to our established methodology for determining the LTCH total CCR ceiling (described above) since it is based on ''total'' IPPS CCR data. Under the LTCH PPS HCO policy at § 412.525(a)(4)(iv)(C) and the short-stay outlier policy at § 412.529(c)(4)(iv)(C), the FI may use a statewide average CCR, which is established annually by CMS, if it is unable to determine an accurate CCR for a LTCH in one of the following circumstances: (1) New LTCHs that have not yet submitted their first Medicare cost report (for this purpose, consistent with current policy, a new LTCH would be defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18); (2) LTCHs whose CCR is in excess of the LTCH CCR ceiling (as discussed above); and (3) other LTCHs for whom data with which to calculate a CCR are not available (for example, missing or faulty data). (Other sources of data that the FI may consider in determining a LTCH's CCR include data from a different cost reporting period for the LTCH, data from the cost reporting period preceding the period in which the hospital began to be paid as a LTCH (that is, the period of at least 6 months that it was paid as a short-term acute care hospital), or data from other comparable LTCHs, such as LTCHs in the same chain or in the same region.)

In the FY 2008 IPPS final rule with comment period, in accordance with § 412.525(a)(4)(iv)(C) for high-cost outliers and § 412.529(c)(4)(iv)(C) for short-stay outliers, using our established methodology for determining the LTCH statewide average CCRs, based on the most recent complete IPPS total CCR data from the March 2007 update of the PSF, the LTCH PPS statewide average total CCRs for urban and rural hospitals effective for discharges occurring on or after October 1, 2007, and before October 1, 2008, are presented in Table 8C of the Addendum to that final rule with comment period (72 FR 48127). (For further detail on our methodology for annually determining the LTCH urban and rural statewide average CCRs, we refer readers to the FY 2007 IPPS final rule (71 FR 48119 through 48121) and FY 2008 IPPS final rule with comment period (72 FR 47403 through 47404).)

We note, under the LTCH PPS high cost outlier policy at § 412.525(a)(4)(iv)(D) and the LTCH PPS SSO policy at § 412.529(c)(4)(iv)(D), the payments for high cost outlier and SSO cases, respectively, are subject to reconciliation. Specifically, any reconciliation of outlier payments is based on the CCR calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled. For additional information, refer to the RY 2008 LTCH PPS final rule (72 FR 26899 through 26900).

c. Establishment of the Proposed Fixed-Loss Amount

When we implemented the LTCH PPS, as discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56022 through 56026), under the broad authority of section 123 of the BBRA as amended by section 307(b) of BIPA, we established a fixed-loss amount so that total estimated outlier payments are projected to equal 8 percent of total estimated payments under the LTCH PPS. To determine the fixed-loss amount, we estimate outlier payments and total LTCH PPS payments for each case using claims data from the MedPAR files. Specifically, to determine the outlier payment for each case, we estimate the cost of the case by multiplying the Medicare covered charges from the claim by the LTCH's hospital specific CCR. Under § 412.525(a)(3) (in conjunction with the revised definition of ''LTC–DRG'' at § 412.503), if the estimated cost of the case exceeds the outlier threshold (the sum of the adjusted Federal prospective payment for the MS–LTC–DRG and the fixed-loss amount), we pay an outlier payment equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the MS–LTC–DRG and the fixed-loss amount).

In the RY 2008 LTCH PPS final rule (72 FR 26898), in calculating the fixed-loss amount that would result in estimated outlier payments projected to be equal to 8 percent of total estimated payments for the 2008 LTCH PPS rate year, we used claims data from the December 2006 update of the FY 2006 MedPAR files and CCRs from the December 2006 update of the PSF, as that was the best available data at that time. We believe that CCRs from the PSF are the best available CCR data for determining estimated LTCH PPS payments for a given LTCH PPS rate year because they are the most recently available CCRs actually used to make LTCH PPS payments.

As we also discussed in the RY 2008 LTCH PPS rate year final rule (72 FR 26898), we calculated a single fixed-loss

amount for the 2008 LTCH PPS rate year based on the version 24.0 of the GROUPER, which was the version in effect as of the beginning of the LTCH PPS rate year (that is, July 1, 2007 for the 2008 LTCH PPS rate year). In addition, we applied the outlier policy under § 412.525(a) in determining the fixed-loss amount for the 2008 LTCH PPS rate year; that is, we assigned the applicable Statewide average CCR only to LTCHs whose CCRs exceeded the ceiling (and not when they fell below the floor). Accordingly, we used the FY 2007 LTCH PPS total CCR ceiling of 1.321 (72 FR 26898). As noted in that same final rule, in determining the fixed-loss amount for the 2008 LTCH PPS rate year using the CCRs from the PSF, there were no LTCHs with missing CCRs or with CCRs in excess of the current ceiling and, therefore, there was no need for us to independently assign the applicable Statewide average CCR to any LTCHs in determining the fixed-loss amount for the 2008 LTCH PPS rate year (as this may have already been done by the FI in the PSF in accordance with the established policy).

Accordingly, in 2008 LTCH PPS rate year final rule (72 FR 26898), as amended by the RY 2008 correction notice (72 FR 36613), we established a fixed-loss amount of $20,738 for the 2008 LTCH PPS rate year. Thus, we pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH PPS payment for the MS–LTC–DRG and the fixed-loss amount of $20,738).

In this proposed rule, for the 2009 LTCH PPS rate year, we used the March 2006 update of the FY 2006 MedPAR claims data to determine a proposed fixed-loss amount that would result in estimated outlier payments projected to be equal to 8 percent of total estimated payments, based on the policies described in this proposed rule, because these data are the most recent complete LTCH data available. Consistent with our historical practice of using the best data available, if more recent LTCH claims data become available, we propose to use it for determining the fixed-loss amount for the 2009 LTCH PPS rate year in the final rule. Furthermore, as noted previously, we determined the proposed fixed-loss amount based on the version of the GROUPER that would be in effect as of the beginning of the 2009 LTCH PPS rate year (July 1, 2008), that is, Version 25.0 of the GROUPER (as established in the FY 2008 IPPS final rule (72 FR 47278)).

We also used CCRs from the July 2007 update of the PSF for determining the proposed fixed-loss amount for the 2009 LTCH PPS rate year as they are currently the most recent complete available data. Consistent with our historical practice of using the best data available, if more recent CCR data are available, we propose to use it for determining the fixed-loss amount for the 2009 LTCH PPS rate year in the final rule. Furthermore, in determining the proposed fixed-loss amount for the 2009 LTCH PPS rate year, we used the current FY 2008 applicable LTCH ''total'' CCR ceiling of 1.284 and LTCH Statewide average ''total'' CCRs established in the FY 2008 IPPS final rule (72 FR 47404 and 48126 through 48127) such that the current applicable Statewide average CCR would be assigned if, among other things, a LTCH's CCR exceeded the current ceiling (1.284). We note that in determining the proposed fixed-loss amount for the 2009 LTCH PPS rate year using the CCRs from the PSF, there was no need for us to independently assign the applicable Statewide average CCR to any LTCHs (as this may have already been done by the FI in the PSF in accordance with our established policy). (Currently, the applicable FY 2008 LTCH Statewide average CCRs can be found in Table 8C of the FY 2008 IPPS final rule (72 FR 48126 through 48127).)

Accordingly, based on the data and policies described in this proposed rule, we are proposing a fixed-loss amount of $21,199 for the 2009 LTCH PPS rate year. Thus, we would pay an outlier case 80 percent of the difference between the estimated cost of the case and the proposed outlier threshold (the sum of the adjusted proposed Federal LTCH payment for the MS–LTC–DRG and the proposed fixed-loss amount of $21,199). We note that the proposed fixed-loss amount for the 2009 LTCH PPS rate year is somewhat higher than the current fixed-loss amount of $20,738. In addition to being based on the most recent available LTCH data to estimate the cost of each LTCH case, this proposed change in the fixed-loss amount is primarily due to the projected increase in estimated aggregate LTCH PPS payments that is expected to result from the proposed 2.6 percent update to the Federal rate (discussed in greater detail in section IV.E. of this preamble), in conjunction with the proposed changes to the area wage adjustment (discussed in greater detail in section IV.F.1. of this preamble) and the changes to the MS–LTC–DRG relative weights for FY 2008 (as discussed in the FY 2008 IPPS final rule (72 FR 47277 through 47299)). As discussed in greater detail in the impact analysis presented in section XII. of this proposed rule, we are projecting that the proposed changes would result in a 1.7 percent increase in estimated payments per discharge in RY 2009 as compared to RY 2008, on average, for all LTCHs. Because of the estimated increase in aggregate LTCH PPS payments proposed for the 2009 LTCH PPS rate year (as discussed above in this section), we believe that an increase in the proposed fixed-loss amount is appropriate and necessary to maintain the requirement that estimated outlier payments would be projected to be equal to 8 percent of estimated total LTCH PPS payments, as required under § 412.525(a). As we discussed in the RY 2008 final rule (72 FR 26897), maintaining the fixed-loss amount at the current level would result in HCO payments above the current regulatory requirement that estimated outlier payments would be projected to equal 8 percent of estimated total LTCH PPS payments. Based on the regression analysis that was performed when we implemented the LTCH PPS (August 30, 2002 final rule (67 FR 56022 through 56027)), we established the outlier target at 8 percent of estimated total LTCH PPS payments to allow us to achieve a balance between the ''conflicting considerations of the need to protect hospitals with costly cases, while maintaining incentives to improve overall efficiency'' (67 FR 56024). That regression analysis also showed that additional increments of outlier payments over 8 percent (that is, raising the outlier target to a larger percentage than 8 percent) would reduce financial risk, but by successively smaller amounts. Outlier payments are budget neutral, and therefore, outlier payments are funded by prospectively reducing the non-outlier PPS payment rates by projected total outlier payments. The higher the outlier target, the greater the (prospective) reduction to the base payment would need to be applied to the Federal rate to maintain BN.

As we discussed in the RY 2008 LTCH PPS final rule (72 FR 26898 through 26899), as an alternative to proposing to lower the fixed-loss amount for RY 2009, we examined adjusting the marginal cost factor (that is, the percentage that Medicare will pay of the estimated cost of a case that exceeds the sum of the adjusted Federal prospective payment for the MS–LTC–DRG and the fixed-loss amount for LTCH PPS outlier cases as specified in § 412.525(a)(3) in conjunction with the revised definition of ''LTC–DRG'' at § 412.503), which is currently equal to 80 percent, as a means of ensuring that estimated outlier payments would be

projected to equal 8 percent of estimated total LTCH PPS payments. When we initially established the 80 percent marginal cost factor in the August 30, 2002 final rule (67 FR 56022 through 56027), we explained that our analysis of payment-to-cost ratios for HCO cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than nonoutlier cases, while simultaneously maintaining the integrity of the LTCH PPS.

In proposing increases to the fixed-loss amount for RY 2007 and RY 2008 (71 FR 27834 and 72 FR 4799 through 4800 respectively), we also solicited comments on whether we should revisit the regression analysis discussed above in this section that was used to establish the existing 8 percent outlier target and 80 percent marginal cost factor, using the most recent available data to evaluate whether the current outlier target of 8 percent or the 80 percent marginal cost factor should be adjusted, and therefore, could have resulted in less of an increase in the fixed-loss amount for RY 2007 and RY 2008, respectively. In response to this solicitation in the RY 2007 proposed rule (as summarized in the RY 2007 LTCH PPS final rule (71 FR 27834 through 27835)), several commenters opposed any option that would allow us to revisit the regression analysis that was used to establish the existing 80 percent marginal cost factor and existing outlier target of 8 percent. The commenters stated their belief that the LTCH PPS is still in its early stages and further changes to the 80 percent marginal cost factor or 8 percent outlier target would result in instability to the system. The commenters cautioned against making any premature changes to the factors affecting HCO payments to LTCHs, particularly the marginal cost factor and outlier target established by regulation when the LTCH PPS was implemented. Also, the commenters agreed that keeping the marginal cost factor at 80 percent and the outlier pool at 8 percent better identifies LTCH patients that are truly unusually costly cases, and that this policy appropriately addresses outlier cases that are significantly more expensive than non-outlier cases. Similarly, as summarized in the RY 2008 final rule (72 FR 26897), we received no comments in support of revisiting the regression analysis discussed above that was used to establish the existing 8 percent outlier target and 80 percent marginal cost factor, using the most recent available data to evaluate whether the current outlier target of 8 percent or the 80 percent marginal cost factor should be adjusted in response to our solicitation on this issue.

In response to these comments, we agreed with the commenters that, based on the regression analysis done for the implementation of the LTCH PPS (August 30, 2002; 68 FR 56022 through 56026), a marginal cost factor of 80 percent and a outlier target of 8 percent best identifies LTCH patients that are truly unusually costly cases, and that such a policy appropriately addresses LTCH HCO cases that are significantly more expensive than non-outlier cases, which is consistent with our intent of the LTCH HCO policy as stated when we implemented the LTCH PPS in the August 30, 2002 final rule (67 FR 56025). Therefore, as supported by many commenters, in both the RY 2007 final rule (71 FR 27835) and the RY 2008 final rule (72 FR 26898), we did not revisit the regression analysis that was used to establish the existing 80 percent marginal cost factor and existing outlier target of 8 percent, and therefore, did not make any changes to the marginal cost factor or outlier target in either of those final rules.

Although proposing to increase the fixed-loss amount from $20,738 to $21,199 (based on the policies presented in this proposed rule) would increase the amount of the ''loss'' that a LTCH must incur under the LTCH PPS for a case with unusually high costs before the LTCH would receive any additional Medicare payments, as we discussed above and as we explained in greater detail in the RY 2006 LTCH PPS final rule (70 FR 24195 through 24196), we continue to believe that the existing 8 percent outlier target and 80 percent marginal cost factor continue to adequately maintain the LTCHs' share of the financial risk in treating the most costly patients and ensure the efficient delivery of services. Accordingly, we are not proposing to adjust the existing 8 percent outlier target or 80 percent marginal cost factor under the LTCH PPS HCO policy at this time. However, we continue to be interested in any comments that would support revisiting the analysis that was used to establish the existing 8 percent outlier target and the existing 80 percent marginal cost factor, using the most recent available data to evaluate whether any changes to the current HCO policy should be made, and therefore, may result in a smaller increase (or even a decrease) in the fixed-loss amount for RY 2009.

For the reasons described above, we believe the proposed fixed-loss amount of $21,199 would appropriately identify unusually costly LTCH cases while maintaining the integrity of the LTCH PPS. Thus, under the broad authority of section 123(a)(1) of the BBRA and section 307(b)(1) of BIPA, we are proposing a fixed-loss amount of $21,199 based on the best available LTCH data and the policies presented in this proposed rule because we believe a proposed increase in the fixed-loss amount is appropriate and necessary to maintain estimated outlier payments are projected to be equal to 8 percent of estimated total LTCH PPS payments, as required under § 412.525(a).

d. Application of Outlier Policy to Short-Stay Outlier (SSO) Cases

As we discussed in the August 30, 2002 final rule (67 FR 56026), under some rare circumstances, a LTCH discharge could qualify as a SSO case (as defined under § 412.529 and discussed in section IV.G. of this preamble) and also as a HCO case. In this scenario, a patient could be hospitalized for less than five-sixths of the geometric ALOS for the specific MS–LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the high cost outlier threshold (that is, the SSO payment plus the fixed-loss amount), the discharge is eligible for payment as a HCO. Thus, for a SSO case in the 2009 LTCH PPS rate year, the HCO payment would be 80 percent of the difference between the estimated cost of the case and the proposed outlier threshold (the sum of the proposed fixed-loss amount of $21,199 and the amount paid under the SSO policy as specified in § 412.529).

4. Other Payment Adjustments

Section 123(a)(1) of the BBRA, as amended by section 307(b) of BIPA, granted the Secretary broad authority to determine appropriate adjustments under the LTCH PPS, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs. In developing the LTCH PPS payment methodology, we conducted extensive regression analyses of the relationship between LTCH costs (including both operating and capital-related costs per case) and several factors that may affect costs such as the percent of Medicaid patients treated, the percent of Supplemental Security Income (SSI) patients treated, the hospital's geographic location, and training residents in approved medical education programs (67 FR 56014). The appropriateness of potential payment adjustments were evaluated based upon whether including each adjustment increased the accuracy of payments to LTCHs.

In the August 30, 2002 LTCH PPS final rule, we detailed the extensive data analysis performed by our contractor, 3M Health Information Systems (3M) and our resulting decisions to implement a COLA for LTCHs in Alaska and Hawaii (§ 412.525(b)) and an adjustment to account for geographical differences in area wage levels (§ 412.525(c)). In addition, we discussed the extensive data analyses that led to the decision not to implement adjustments for geographic reclassification, rural location, the treatment of a disproportionate share of low-income patients (DSH), or indirect medical education (IME) costs. We also noted that we would continue to collect data and revisit these determinations as additional data became available. (For more detailed information, see 67 FR 56014 through 56027.)

When we implemented the LTCH PPS for FY 2003, we provided for a 5-year transition period (§ 412.533), to allow LTCHs time to adjust to the new payment system (67 FR 56038). For cost reporting periods beginning on or after October 1, 2006, the final year of the 5-year transition, LTCHs are paid based on 100 percent of the Federal rate.

We continued to collect and interpret new data as they became available to determine if these data support proposing any additional payment adjustments. In both the RY 2007 and the RY 2008 LTCH PPS final rules, we stated that we believed that it was appropriate to wait for the conclusion of the 5-year transition to 100 percent of the Federal rate under the LTCH PPS to maximize the availability of data that reflected LTCH behavior in response to the implementation of the LTCH PPS. The availability of this data would allow us to conduct a comprehensive reevaluation of payment adjustments under the LTCH PPS. (See the RY 2007 and RY 2008 LTCH PPS final rules (71 FR 27839) and (72 FR 26900), respectively.)

Therefore, similar to the data analyses conducted at the inception of the LTCH PPS for FY 2003, 3M evaluated LTCH data from the most recent cost report files in our HCRIS database (updated through June 30, 2007) for providers' cost reports beginning during fiscal years 2004 through 2006. We believe that in the 5 years since the start of the LTCH PPS, there has been sufficient new data generated to allow for a comprehensive reevaluation of the appropriateness of payment adjustments such as geographic reclassification, rural location, DSH, and IME under the LTCH PPS at this time.

Our most recent data analysis which is based on the comprehensive data analysis by 3M (referenced above), indicates that proposing payment adjustments for geographic reclassification, rural location, DSH, or indirect medical education (IME) costs would not improve the accuracy of payments to LTCHs. (3M's ''Report on LTCH Payment Methodology Review and Results'' is posted on our Web site at: *http://www.cms.hhs.gov/LongTermCareHospitalPPS/08_download.asp#TopOfPage*.

We believe that these analyses confirm our initial determinations as we developed the LTCH PPS regarding the applicability of PPS payment adjustments. Therefore, we are not proposing to adopt any additional payment adjustments such as geographic reclassification, rural location, DSH, or IME, as features of the LTCH PPS. Proposed policies for the RY 2009 wage index adjustment and the COLA are discussed in sections IV.D.1 and 2. of this proposed rule, respectively. Furthermore, now that the 5-year transition to the LTCH PPS is completed, we have collected data that reflects LTCH behavior in response to the implementation of the LTCH PPS. We believe that our above described analyses of LTCH PPS data do not support the adoption of any additional payment adjustments. We further believe that since 3M's recent analyses confirm policy determinations that have been in place since the implementation of the LTCH PPS for FY 2003, that annual data analyses related to potential payment adjustments for geographic reclassification, rural location, DSH or IME will not be necessary barring significant transformations in the nature of the LTCH universe or substantial changes in Medicare payment outcomes that warrant additional evaluation.

5. Technical Correction to the Budget Neutrality Requirement at § 412.523(d)(2)

Section 123(a)(1) of the Public Law 106–113 requires that the PPS developed for LTCHs be budget neutral for the initial year of implementation. Furthermore, under section 307(a)(2) of the Public Law 106–554, the increases to the target amounts and the cap on the target amounts for LTCHs provided for by section 307(a)(1) of Public Law 106–554 (as set forth in section 1886(b)(3)(J) of the Act), and the enhanced bonus payments for LTCHs provided for by section 122 of Public Law 106–113 (as set forth in section 1886(b)(2)(E) of the Act) were not to be taken into account in the development and implementation of the LTCH PPS. Therefore, when we implemented the LTCH PPS, in the August 30, 2002 final rule (67 FR 56052), we established a budget neutrality requirement at § 412.523(d)(2) for calculating the standard Federal rate for FY 2003 such that estimated aggregate LTCH PPS payments were estimated to be equal to estimated payments that would have been made to LTCHs under the reasonable cost-based payment methodology had the PPS for LTCHs not been implemented, and, to implement section 307(a)(2) of the Public Law 106–554, we excluded the effects of sections 1886(b)(2) and (b)(3) of the Act.

We are proposing a technical correction to existing § 412.523(d)(2) that would more precisely describe the provisions of sections 1886(b)(2) and (b)(3) of the Act that were not taken into account when determining the standard Federal rate under § 412.523(d). The current regulatory language at § 412.523(d)(2) cites the general sections of the Act which contain the specific provisions set forth in § 307(a)(2) of Public Law 106–554 that the Secretary is required to not take into account in developing the PPS. We believe that it is clearer and more precise to cite the specific subparagraphs the Secretary did not take into account rather than to cite the general sections of the Act of which such subparagraphs are a part. In order to mitigate any confusion that may be caused by existing regulations, we are proposing to make a technical correction at § 412.523(d)(2). Specifically, we are proposing to revise § 412.523(d)(2) to state that the effects of section 1886(b)(2)(E) of the Act (enhanced bonus payments for LTCHs, as described above) and section 1886(b)(3)(J) of the Act (increases to the hospital-specific target amounts and the cap on the target amounts for LTCHs, as described above) were excluded in the development of the FY 2003 LTCH PPS standard Federal rate. This technical correction would make the regulatory language consistent with section 307(a)(2) of Public Law 106–113 and consistent with the methodology we used to determine the LTCH PPS standard Federal rate under § 412.523, and it is not a change in policy. (Accordingly, no adjustments to the LTCH PPS standard Federal rate computed under § 412.523(d) have been proposed in conjunction with this proposed technical correction to § 412.523(d)(2).)

G. Proposed Conforming Changes

Various regulations throughout 42 CFR Part 412 Subpart O indicate that the terms ''urban area'' and ''rural area'' are defined according to the definitions of ''urban area'' and ''rural area'' found in 42 CFR Part 412 Subpart D (the IPPS

regulations). Specifically, §§ 412.525(c), 412.529(d)(4)(ii)(B) and (d)(4)(iii)(B), 412.534(d)(1), (f)(2)(ii), and (f)(3)(ii), and 412.536(c)(1), (e)(2)(ii), and (e)(3)(ii) of Subpart O refer to the definitions of ''urban area'' and ''rural area'' in either § 412.62(f)(1)(ii) and (f)(1)(iii) or § 412.64(b)(1)(ii)(A)–(C) in 42 CFR Part 412 Subpart D. As stated elsewhere in the preamble, we believe that it is administratively simpler to define the terms ''urban area'' and ''rural area'' in § 412.503 rather than cross-referencing the definitions of ''urban area'' and ''rural area'' in § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii) and § 412.64(b)(1)(ii)(A)–(C). Consequently, in section IV.F.1.b(4). of this regulation, we propose to add definitions for ''urban area'' and ''rural area'' in § 412.503 which would incorporate the provisions of § 412.62(f)(1)(ii) and (f)(1)(iii) as well as § 412.64(b)(1)(ii)(A) through (C). Because we are proposing to define ''urban area'' and ''rural area'' in § 412.503, the citations to the definitions of ''urban area'' and ''rural area'' in § 412.62(f)(1)(ii) and § 412.62 (f)(1)(iii) and § 412.64(b)(1)(ii)(A)–(C) which are found in §§ 412.525(c), 412.529(d)(4)(ii)(B) and (d)(4)(iii)(B), 412.534(d)(1), (f)(2)(ii), and (f)(3)(ii), and 412.536(c)(1), (e)(2)(ii), and (e)(3)(ii) would need to be replaced with references to § 412.503. We are proposing to replace the above-described references with § 412.503. (We note that provisions of the Medicare, Medicaid, and SCHIP Extension Act of 2007, enacted on December 29, 2007 require a 3-year suspension of the payment adjustments at § 412.534 to ''grandfathered LTCHs'' and application of § 412.536 to ''freestanding'' LTCHs for cost reporting periods beginning on or after the date of enactment of the legislation. In addition, revisions to the short stay outlier policy, as well as other changes to the regulations necessitated by MMSEA will be addressed in a future notice.)

VI. Computing the Proposed Adjusted Federal Prospective Payments for the 2008 LTCH PPS Rate Year

In accordance with § 412.525 and as discussed in section IV.C. of this proposed rule, the standard Federal rate is adjusted to account for differences in area wages by multiplying the labor-related share of the standard Federal rate by the appropriate LTCH PPS wage index (as shown in Tables 1 and 2 of Addendum A to this proposed rule). The standard Federal rate is also adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the nonlabor-related share of the standard Federal rate by the appropriate cost-of-living factor (shown in Table 3 in section IV.D.2 of this preamble). In the RY 2008 LTCH PPS final rule (72 FR 4776), we established a standard Federal rate of $38,356.45 for the 2008 LTCH PPS rate year. In this proposed rule, based on the best available data and the proposed policies described in this proposed rule, we are proposing that the standard Federal rate for the 2009 LTCH PPS rate year would be $39,076.28 as discussed in section IV.C.3. of this preamble. We illustrate the methodology that would be used to adjust the proposed Federal prospective payments for the 2009 LTCH PPS rate year in the following examples:

Example: During the 2009 LTCH PPS rate year, a Medicare patient is in a LTCH located in Chicago, Illinois (CBSA 16974). The proposed full LTCH PPS wage index value for CBSA 16974 is 1.0715 (see Table 1 in Addendum A to this proposed rule). The Medicare patient is classified into MS–LTC–DRG 28 (Spinal Procedures with MCC), which has a current relative weight of 1.1417 (see Table 3 of Addendum A to this proposed rule).

To calculate the LTCH's proposed total adjusted Federal prospective payment for this Medicare patient, we compute the proposed wage-adjusted Federal prospective payment amount by multiplying the proposed unadjusted standard Federal rate ($39,076.28) by the proposed labor-related share (75.920 percent) and the proposed wage index value (1.0715). This proposed wage-adjusted amount is then added to the nonlabor-related portion of the proposed unadjusted standard Federal rate (24.080 percent; adjusted for cost of living, if applicable) to determine the proposed adjusted Federal rate, which is then multiplied by the MS–LTC–DRG relative weight (1.1417) to calculate the proposed total adjusted Federal prospective payment for the 2009 LTCH PPS rate year ($47,035.13). Table 6 illustrates the components of the calculations in this example.

TABLE 6

Unadjusted Proposed Standard Federal Prospective Payment Rate	$39,076.28
Proposed Labor-Related Share	× 0.75920
Proposed Labor-Related Portion of the Federal Rate	= $29,666.71
Proposed Wage Index (CBSA 16974)	× 1.0715
Proposed Wage-Adjusted Labor Share of Federal Rate	= $31,787.88
Proposed Nonlabor-Related Portion of the Federal Rate ($39,076.28 x 0.24080)	+ $ 9,409.57
Proposed Adjusted Federal Rate Amount	= $41,197.45
MS–LTC–DRG 9 Relative Weight	× 1.1417
Proposed Total Adjusted Federal Prospective Payment	= $47,035.13

VII. Monitoring

In the August 30, 2002 final rule (67 FR 56014), we described an on-going monitoring component to the new LTCH PPS. Specifically, we discussed on-going analysis of the various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based PPS. As a result of our data analysis, we have revisited a number of our original policies and have identified behaviors by certain LTCHs that lead to inappropriate Medicare payments.

In the RY 2005 LTCH PPS final rule (69 FR 25692) we revised the interruption of stay policy. We also established a payment adjustment for LTCH HwHs and satellites in the FY 2005 IPPS final rule (69 FR 49191 through 49214). In the RY 2008 final rule, at § 412.536, based on additional data monitoring and analysis, we expanded this payment adjustment to apply to LTCHs and LTCH satellites that were not co-located with their referring hospitals.

In the RY 2007 and 2008 final rules (71 FR 27798 and 72 FR 28670), we revised the SSO payment adjustment formula as a consequence of data analyses which indicated that Medicare was overpaying for certain SSO cases.

Although at this time, we are not proposing any new payment adjustments that have resulted from our monitoring activity, we continue to pursue our on-going monitoring program that involves the CMS Office of Research and Development (ORDI), existing QIO monitoring, and studies described in the RY 2006 LTCH PPS final rule (70 FR 24211).

As we discussed in the RY 2004 LTCH PPS final rule (68 FR 34157), the Medicare Payment Advisory Commission (MedPAC) endorsed our monitoring activity. Furthermore, the Commission pursued an independent research initiative that led to a section in MedPAC's June 2004 Report to Congress entitled ''Defining long-term care hospitals''. This study included recommendations that we develop facility and patient criteria for LTCH admission and treatment and that we require a review by QIOs to evaluate whether LTCH admissions meet criteria for medical necessity once the recommended facility and patient criteria are established (70 FR 24210). In response to the recommendation in MedPAC's June 2004 Report, we awarded a contract to Research Triangle Institute, International (RTI), on September 27, 2004, to conduct a thorough examination of the feasibility of implementing MedPAC's recommendations.

Both Part 1 and Part 2 of the RTI Report are available on our Web site at *http://www.cms.hhs.gov/LongTermCareHospitalPPS/02a_RTIReports.asp#TopOfPage*. We also included the Executive Summary of RTI's final report in Addendum B of the RY 2008 proposed rule (72 FR 4884 through 4886). (A comprehensive discussion of RTI's continuing work is included at section XI of this proposed rule.)

VIII. Method of Payment

Under § 412.513, a Medicare LTCH patient is classified into a MS–LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The MS–LTC–DRG is used to determine the Federal prospective payment that the LTCH will receive for the Medicare-covered Part A services the LTCH furnished during the Medicare patient's stay. Under § 412.541(a), the payment is based on the submission of the discharge bill. The discharge bill also provides data to allow for reclassifying the stay from payment at the full MS–LTC–DRG rate to payment for a case as a SSO (under § 412.529) or as an interrupted stay (under § 412.531), or to determine if the case will qualify for a HCO payment (under § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information used to determine if an adjustment to the full MS–LTC–DRG payment is necessary (for example, LOS or interrupted stay status) are recorded by the LTCH on the Medicare patient's discharge bill and submitted to the Medicare FI for processing. The payment represents payment in full, under § 412.521(b), for inpatient operating and capital-related costs, but not for the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or the costs of photocopying and mailing medical records requested by a Quality Improvement Organization (QIO), which are costs paid outside the LTCH PPS.

As under the previous reasonable cost-based payment system, under § 412.541(b), a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h), based on the estimated prospective payment for the year, and may be eligible to receive accelerated payments as described in § 413.64(g). We exclude HCO payments that are paid upon submission of a discharge bill from the PIP amounts. In addition, Part A costs that are not paid for under the LTCH PPS, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists and the costs of photocopying and mailing medical records requested by a QIO, are subject to the interim payment provisions as specified in § 412.541(c).

Under § 412.541(d), LTCHs with unusually long lengths of stay that are not receiving payment under the PIP method may bill on an interim basis (60 days after an admission and at intervals of at least 60 days after the date of the first interim bill) and this should include any HCO payment determined as of the last day for which the services have been billed.

IX. RTI's Research

With the recommendations of MedPAC's June 2004 Report to Congress as a point of departure, we awarded a contract to Research Triangle Institute, International (RTI) at the start of FY 2005 for a comprehensive evaluation of the feasibility of developing patient and facility level characteristics for LTCHs that could distinguish LTCH patients from those treated in other hospitals.

RTI completed this project in two phases. In Phase I, RTI prepared a background report summarizing existing information regarding LTCHs' current role in the Medicare system: their history as Medicare participating providers; the types of patients they treat; the criteria QIOs currently use to review appropriateness of care in these settings; and the types of regulations they face as Medicare participating providers. This work reviewed prior analyses of these issues and included discussions with MedPAC, other researchers, CMS, the QIOs, and the hospital associations.

In Phase II, RTI collected additional information on tools currently used by the QIOs and the industry to assess patient appropriateness for admission; analyzed claims to understand differences between short term acute care hospital patients with outlier stays who were subsequently treated in LTCHs compared to those who were not and differences between patients who continued treatment as outliers in acute care hospitals with patients who had been admitted to LTCH with the same DRGs; and visited different types of hospitals to observe first-hand how LTCH patients differ from those in other settings and how this pattern varies in different parts of the country. RTI worked with different associations, including the National Association of Long Term Hospitals (NALTH), the Acute Long Term Hospital Association (ALTHA), the American Hospital Association (AHA), and the American Medical Rehabilitation Providers Association (AMRPA), as well as several of the larger LTCH chains. The final report for those phases submitted by RTI summarizes these efforts and makes recommendations to CMS regarding LTCHs.

(We have posted the reports on both Phase I and Phase II of RTI's research on our Web site at *http://www.cms.hhs.gov/LongTermCareHospitalPPS/02a_RTIReports.asp#TopOfPage*.)

In summary, RTI's research has resulted in an extensive and careful analysis of the Medicare populations served by LTCHs, a comparison of these populations with those treated in other acute settings, including IPPS, IRFs, and Inpatient Psychiatric populations, as well as those treated in less intensive settings such as SNFs. This work included analysis of Medicare data to compare patient characteristics and provider costs for certain types of patients; regulatory requirements governing program conditions of participation for these different types of facilities; interviews with private sector developers of level of care determinations; and site visits and interviews with physicians treating these typical and frequently overlapping populations.

The results suggested that while there are some patients who require very long term acute care hospitalization there are also many patients whose LOS at the LTCH may trigger a short stay outlier payment, suggesting that not all LTCH admissions had a LOS consistent with

the need for prolonged acute care hospitalization in an LTCH. While existing patient criteria such as Interqual are useful for distinguishing between the need for hospital-level treatment and a less intensive level, such as SNF care, RTI's analysis has determined that, in fact, the private sector criteria failed to distinguish between patients at LTCHs and patients at acute care hospitals. The criteria proposed by the National Association for Long Term Hospitals (NALTH) also had this shortcoming. While they identified the acute care patient, they failed to identify differences between LTCH admissions' clinical characteristics and those treated in a general acute care hospital, in either a step down unit, or in some cases, a general medical/surgery unit.

On January 30, 2007, RTI convened a Technical Expert Panel (TEP) comprised of physicians, nurses, and hospital administrators representing, LTCHs, acute care hospitals, IRFs, and SNFs, all of which represent the range of inpatient settings for treating medically complex patients. The goal of this meeting was to identify a set of clinical indicators that distinguish between the medically complex populations at LTCHs and acute care hospitals , including ICU, step-down, and general acute care. The panelists examined severity measures and treatment needs for medically complex patients to define the point at which ICU or acute care patients become appropriate for care at LTCHs. They focused on patient criteria currently used by some providers and QIOs. Presentations described existing systems for identifying medical complexity and severity of illness for a particular patient. In exchanges between the presenters and panel members , however, acute care hospital physicians stated that acute care hospitals treated severely ill patients with medically complex conditions for their entire episode of care and that these measures were not useful for determining whether the patient should be treated in an acute care hospital or a LTCH. After discussion, the TEP participants reached a consensus that LTCHs provide a service that is comparable to general acute step-down units and is not unique to LTCHs.

Discussions with LTCH physicians and acute care hospital physicians practicing in areas that lack LTCHs confirmed the results of RTI's data analyses in demonstrating the widespread overlap in the patient populations treated in LTCHs and those treated in acute care hospitals. Though representatives from the LTCHs clearly described the medical complexity and severity of illness of their patient populations, much of the difference between the LTCH and acute hospital patient populations was driven by geography and access to LTCH facilities. In the many areas of the country without access to LTCH services, acute hospitals treat the medically complex patients and receive an acute hospital IPPS payment, or outlier payment in cases where the costs of care are very high, rather than the much higher LTCH payment. As a result of the discussion, claims by the LTCH industry that medically complex patients treated in LTCHs were significantly different from medically complex patients treated in acute settings were not confirmed, though panel members did agree that more work may need to be done to measure outcomes for medically complex patients treated in each of these settings. There was also consensus among the panelists that quality of care was related to treating a sufficient volume of these difficult cases, regardless of provider setting.

On November 6, 2007, RTI convened a second TEP based upon the earlier meeting and participant responses. As with the first TEP, panel members included LTCH physicians and administrators, acute care physicians in areas without LTCHs (for example, New York and northern New England), physicians from SNFs in areas without LTCHs, and several IRF physicians.

There was an intentional focus at the second TEP on Medicare patients with respiratory conditions requiring mechanical ventilation (vent patients). RTI presented data showing the mechanical ventilator patients were relatively homogenous in their likelihood of using LTCHs whereas the medically complex (respiratory) patients were much more diverse in their distributions making it more difficult to develop measurable medical parameters and widely accepted treatment protocols for this group. However, it was acknowledged that ventilator patients (referred to as ''vent patients'' in the following discussion) comprise less than 15 percent of all LTCH patients. RTI believed that the category of ''medically complex'' cases was too amorphous and the focus on vent patients would allow for more meaningful comparisons between the provider types. Nationwide, vent patients are treated in acute care hospitals and in LTCHs while some IRFs and SNFs accept and treat this group of patients. (We would also note that, as MedPAC found in its June, 2004 Report to Congress, the highest predictor of LTCH use is whether a patient has had a tracheotomy which is common in long-term ventilator-dependent patients. (p. 125))

RTI presented two analyses of Medicare claims data based on episodes of care constructed for beneficiaries with vent-related DRGs during their initial (acute) admission. The first analysis compared outcomes for patients living in areas with LTCHs, to outcomes for clinically similar patients living in geographically comparable areas that had no LTCHs. The second examined episodes of care only for beneficiaries in specific states with several LTCHs, and compared outcomes for clinically similar cases that remained in the acute care setting with those that were referred to an LTCH. Both analyses used a ''propensity score approach'' which groups patients according to the clinical and demographic characteristics that predict LTCH referral.

The first analysis found that there was very little difference in average episode length, Medicare cost, mortality or length of time before being discharged home, between areas that have LTCHs and those that do not. The second analysis found that results differed between cases with the highest probability of using LTCHs (those medically complex vent cases with tracheotomies, longer prior ICU stays), and ventilator cases with lower probability of using LTCHs. In the small group with a high likelihood, mortality was lower and the 60-day likelihood of being discharged home was higher for those referred to LTCHs than for those staying in acute settings, while Medicare payments were the same or less. Among the less complex cases, however, RTI found that LTCH referral was associated with much higher costs and same or worse performance in other outcome measures. These findings are very similar to those noted by MedPAC in the Commission's June 2004 Report to the Congress. (p. 126–127).

RTI also asked TEP members to evaluate 6 case vignettes and assess which patients were appropriate for admission to their type of facility. The case vignettes consisted of detailed medical histories of two ventilator-dependent patients admitted for weaning, two wound care patients, and two ''medically complex'' patients.

The TEP indicated that there were significant differences between the level of patient morbidity that the acute care hospitals and LTCHs would admit and treat as compared to the IRFs and also the SNFs, but that LTCH patients and patients treated in IPPS acute care hospital step-down units were virtually indistinguishable. In further discussion of individual case vignettes, LTCH and

acute care hospital physicians were in accord regarding appropriate therapeutic dispositions for the stabilized, post-ICU ''critical care'' patients and they agreed that such patients could be appropriately treated in either acute care hospital step-down units or in LTCHs. Therefore, although there was consensus regarding the medical profile of such patients, it was also noted by one acute care physician that this indicated that ''there is no such thing as an LTCH-only patient.'' On the other hand, acute care hospital physicians noted that typically, in their facilities, their step-down units may take a slightly less stable ''critical care'' patient than would be treated in a LTCH, that is, patients that may have some unresolved medical issues still being diagnosed especially if there was a need to free-up an ICU bed. This was possible because such a patient would continue treatment by the same physicians and have access to the full range of acute care hospital services but also could return to the ICU without significant difficulty, if necessary.

The panelists also discussed a realistic definition of patient stability for ''critical care'' patients in different settings and whether this was typically based upon ''vital signs,'' dependence on ''pressors,'' (intravenous drugs administered to raise blood pressure) or whether patient stability was based on a physician's subjective determination (for example, ''I know it when I see it''). There was additional clinically-oriented discussion of measures of medical stability. (It was also noted that while some of the ''medically complex'' patients currently being treated in LTCHs would fall into the ''critical care'' category, this is not the case for all of their patients.)

Panelists also addressed the intensity of nursing care required by a ''critical care'' patient and the central role of the nurse to patient ratio in identifying the level of care offered in a hospital. Both LTCHs and IPPS step-down units typically have a RN to patient ratio of 1-to-4 or 1-to-5. LTCH physicians emphasized the value of the LTCH ''team approach'' to patient care to the agreement of the TEP's acute care hospital physicians who noted that this approach is also the model that is in place in their facilities. One physician noted that he had little doubt that a ''critical care'' patient hospitalized at any of the acute care hospitals or LTCHs represented at the TEP would receive an equivalent and high level of treatment.

Members of the panel also indicated that discharges from acute care hospitals to LTCHs (in areas where this is an option) often occur because the LTCH is known to provide specialized treatment for particular types of patients. It was also noted, however, that commonly, hospital resources drive patient placement regarding the treatment of very sick and expensive patients when there is an LTCH placement option.

Following the above exchanges, it was widely acknowledged by panelists that measures distinguishing appropriate LTCH patients from patients being treated in step-down units of acute care hospitals were not going to be developed by the TEP. There were serious questions raised as to whether developing such a product was even feasible. The group concurred on the recommendations, listed below, for a treatment model for the type of ''critical care'' patients who had been the focus of TEP:

- CMS should pay similar rates for similar patients regardless of setting if certain objective parameters associated with patient care were present, among which were:

++ A critical mass of patients with the targeted conditions to ensure sufficient experience in those areas for the health professionals in that setting;

++ Patient-level criteria to identify appropriate cases for this level of care, applicable regardless of setting;

++ Quality of care should be based on structure and process standards;

++ Interdisciplinary teams with physician leads, appropriate nurse staffing levels; and inclusion of treating therapists (for example, physical, respiratory, occupational);

- Both LTCHs and these IPPS step-down units meeting these standards could be recognized as ''Centers of Excellence'' for patients defined as critically ill.

TEP members decided not to include ''patient outcomes'' on the list of recommendations because of concerns that a facility's recognition and/or payment based on patient outcomes could lead to ''cherry-picking'' of less sick patients which could lead to access problems for otherwise appropriate patients.

In summary, there was a consensus at the end of RTI's second TEP that LTCHs treat patients who are also treated by acute care hospitals. The ''critical care'' post-ICU patient who LTCHs describe as their targeted patient are treated throughout most of the country in acute care hospital step-down units. The interdisciplinary team treatment model is the standard both in many LTCHs and in many acute care hospitals with step-down units. While by definition, the patients appropriate for treatment in a LTCH require hospital-level care (as opposed to SNF level), it is not clear that any criteria can be developed which identifies patients who belong in a LTCH exclusively.

RTI will continue to work on these issues in preparing its final report. The results thus far have shown empirically, that LTCHs treat medically stable but critically ill patients that are clinically indistinguishable from those treated in step-down units of acute care hospitals. The work has also confirmed earlier research showing that for cases other than the vent patients discussed above in this section, that in the absence of compelling data on patient outcomes, that treatment at an LTCH is less cost-effective for the same DRGs than is treatment at acute care hospitals for the same DRGs.

These TEPs have been important for furthering the discussion regarding the feasibility of developing unique criteria for LTCH patients. Over the past few years, the clinicians have agreed that LTCHs specialize in treating critically ill patients with multiple comorbidities and other longer term, acute level needs. This consensus contributes to identifying an appropriate LTCH patient by acuity of illness as well as LOS. Over the next few months, RTI will continue working with the clinical community to make recommendations regarding payment and treatment of critically ill patients, particularly in LTCHs. Further work will expand on the Centers of Excellence concept to examine the structure and process needed for such a designation. Additional analysis will examine the relative costs and payments for these patients under different payment systems.

X. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

XI. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption ''IMPACT'' at the beginning of your comments.]

A. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995

(UMRA) (Pub. L. 104–4), and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). In the impact analysis, we are using the proposed rates, factors and policies presented in this proposed rule, including updated proposed wage index values, and the best available claims and CCR data to estimate the change in proposed payments for the 2009 LTCH PPS rate year. As stated in section I.A. of this preamble section 114(e)(1) of the MMSEA at the new section 1886(m)(2) to the Act revises the standard Federal rate for RY 2008 by providing that the base rate for RY 2008 shall be the same as the base rate for RY 2007 (in other words, the standard Federal rate for RY 2008 is the same as the standard Federal rate for 2007). Also, section 114(e)(2) of the MMSEA provides that the revised rate does not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008. As noted in section IV.E. of this preamble, the standard Federal rate for RY 2007 was $38,086.04. Furthermore, we note that section 114(c)(3) of MMSEA requires a 3-year suspension of our implementation of the revisions to the SSO policy at § 412.529(c)(3)(i) that was finalized in the RY 2008 final rule. Both of these revisions to RY 2008 LTCH PPS payments (that is, sections 114(c)(3) and (e)(1) through (2) of MMSEA) affect the modeling of payments in this impact analysis, which we will discuss in greater detail in section XVI.B.3. of this proposed rule. Based on the best available data for 394 LTCHs, we estimate that the proposed update to the standard Federal rate for RY 2009 (discussed in section IV.C. of the preamble of this proposed rule) and the proposed changes to the area wage adjustment (discussed in section IV.F.1. of the preamble of this proposed rule), for the 2009 LTCH PPS rate year, in addition to an estimated increase in short-stay and high cost outlier payments (as discussed in greater detail below) would result in an increase in estimated payments from the 2008 LTCH PPS rate year of approximately $124 million (or about 2.9 percent) for the 394 LTCHs in our database. Based on the 394 LTCHs in our database, we estimate RY 2008 LTCH PPS payments to be approximately $4.32 billion and RY 2009 LTCH PPS payments to be approximately $4.44 billion. Because the combined distributional effects and estimated changes to the Medicare program payments would be greater than $100 million, this proposed rule would be considered a major economic rule, as defined in this section. We note the approximately $124 million for the projected increase in estimated aggregate LTCH PPS payments resulting from the provisions presented in this proposed rule does not reflect changes in LTCH admissions or case-mix intensity in estimated LTCH PPS payments, which would also affect overall payment changes. (We note that due to rounding, the approximation of $124 million is closer to the projected increase in estimated aggregate LTCH PPS payments than the difference between the approximately $4.44 billion and approximately $4.32 billion in estimated RY 2008 and RY 2009 LTCH PPS payments, respectively.)

We note that the average combined effect of the proposed standard Federal rate and area wage adjustment changes on estimated aggregate payments cannot be computed by simply adding up the estimated averages in columns 6 and 7 of Table 9 because each of those two columns are intended to show the isolated impact of the respective proposed change (that is, the proposed change to the standard Federal rate or the proposed change to the area wage adjustment) on estimated payments for RY 2009 as compared to RY 2008, and the interactive effects resulting from both the proposed change to the standard Federal rate and proposed change to the area wage adjustment are not accounted for in the modeling of estimated payments to produce the percent change in each of these columns. However, the interactive effects of all proposed changes are taken into account in the modeling of estimated payments for RY 2009 as compared to RY 2008 in Column 8 of Table 9. Notwithstanding this limitation in comparing the various columns in Table 9, the difference between the projected increase in payments per discharge from RY 2008 to RY 2009 for all changes of 2.9 percent (column 8) and the sum of the projected increase due to proposed change to the standard Federal rate (2.2 percent in column 6) and the proposed change due to the area wage adjustment (−0.1 percent in column 7) of 2.1 percent (that is, 2.2 percent + (−0.1 percent) = 2.1 percent) is mostly attributable to the effect of the estimated increase in payments for HCO and SSO cases in RY 2009 as compared to RY 2008. That is, in calculating the estimated increase in payments from RY 2008 to RY 2009 for HCO and SSO cases, we increased estimated costs by the applicable proposed market basket (approximately 3.5 percent). We note, SSO cases comprise approximately 16 percent of estimated total LTCH PPS payments and HCO cases comprise approximately 8 percent of estimated total LTCH PPS payments. The vast majority of the payments for SSO cases (over 80 percent) are based on the estimated cost of the case.

While the effects of the estimated increase in SSO and HCO payments and the proposed change to the standard Federal rate which are projected to increase estimated payments per discharge from RY 2008 to RY 2009, the proposed changes to the area wage adjustment from RY 2008 to RY 2009 are expected to result in a small decrease of 0.1 percent in estimated aggregate LTCH PPS payments from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year (see column 7 of Table 9). As discussed in section IV.F.1. of this proposed rule, we are proposing to update the wage index values for RY 2009 based on the most recent available data. In addition, we are proposing to increase the labor-related share from 75.788 percent to 75.920 percent under the LTCH PPS for RY 2009 based on the most recent available data on the relative importance of the labor-related share of operating and capital costs of the market basket applicable to the LTCH PPS (also discussed in section IV.F.1. of this proposed rule).

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. For further information, see the Small Business Administration's regulation at 70 FR 72577, December 6, 2005. Individuals and States are not included in the definition of a small entity. Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary LTCHs. Therefore, we assume that all LTCHs are considered small entities for the purpose of the analysis that follows. Medicare FIs are not considered to be small entities. The

Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Currently, our database of 394 LTCHs includes the data for 88 non-profit (voluntary ownership control) LTCHs and 265 proprietary LTCHs. Of the remaining 41 LTCHs, 25 LTCHs are Government-owned and operated and the ownership type of the other 16 LTCHs is unknown (as shown in Table 9). The impact of the proposed payment rate and policy changes for the 2009 LTCH PPS rate year (including the proposed update to the standard Federal rate and the proposed changes to the area wage adjustment) is discussed in section XVI.B.4.c. of this proposed rule.

As we discuss in detail throughout the preamble of this proposed rule, based on the most recent available LTCH data, we believe that the provisions of this proposed rule would result in an increase in estimated aggregate LTCH PPS payments and that the resulting LTCH PPS payment amounts result in appropriate Medicare payments.

The impact analysis of the proposed payment rate and policy changes in Table 9 shows that estimated payments per discharge are expected to increase approximately 2.9 percent, on average, for all LTCHs from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year. We are proposing a 2.6 percent increase to the standard Federal rate for RY 2009 (as discussed in section IV.E. of this proposed rule). The projected 2.9 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year is attributable to the proposed change to the rate, the area wage adjustment (discussed in section IV.F.1. of this proposed rule) and estimated increases in short-stay outlier (SSO) and high cost outlier (HCO) payments (as discussed in greater detail below). That is, as Table 9 shows, the proposed change to the standard Federal rate is projected to result in an estimated average increase of 2.2 percent in estimated payments per discharge from RY 2008 to RY 2009, on average, for all LTCHs, while the proposed changes to the area wage adjustment are projected to result in an estimated decrease of 0.1 percent, on average, for all LTCHs (columns 6 and 7 of Table 9, respectively). A thorough discussion of the regulatory impact analysis for the proposed changes presented in this proposed rule can be found below in section XVI.B.3. of this proposed rule.

3. Impact on Rural Hospitals

For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table 9, we are projecting a 2.6 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year for rural LTCHs as a result of the proposed changes presented in this proposed rule (that is, the proposed update to the standard Federal rate discussed in section IV.E. of the preamble of this proposed rule and the proposed changes to the area wage adjustment as discussed in section IV.F.1. of the preamble of this proposed rule) based on the data of the 25 rural LTCHs in our database of 394 LTCHs for which complete data were available.

As shown in Table 9, the estimated increase in estimated LTCH PPS payments from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year for rural LTCHs is primarily due to the proposed update to the standard Federal rate (as discussed in greater detail in section IV.E. of the preamble of this proposed rule) and the proposed change in the area wage adjustment (as discussed in greater detail in section V.F.1. of the preamble of this proposed rule) in conjunction with the estimated increased payments for SSO and HCO cases (as discussed below in section XVI.B.3. of this proposed rule). We believe that the changes to the area wage adjustment presented in this proposed rule (that is, the proposed use of updated wage data and the proposed change in the labor-related share) would result in accurate and appropriate LTCH PPS payments in RY 2009 since they are based on the most recent available data. Such updated data appropriately reflect national differences in area wage levels and identifies the portion of the proposed standard Federal rate that should be adjusted to account for such differences in area wages, thereby resulting in accurate and appropriate LTCH PPS payments.

4. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it result in expenditures by the private sector of $120 million or more in any 1 year.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule would not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law, based on the 25 State and local LTCHs (that is, Government ownership type) in our database of 394 LTCHs for which data were available.

6. Alternatives Considered

In the preamble of this proposed rule, we are setting forth the proposed annual update to the payment rates for the LTCH PPS for RY 2009. In this preamble, we specify the statutory authority for the provisions that are presented, identify those proposed policies when discretion has been exercised, and present rationale for our decisions as well as alternatives that were considered, and solicit comments on suggested alternatives from commenters (where relevant).

B. Anticipated Effects of Proposed Payment Rate Changes

We discuss the impact of the proposed changes to the payment rates, factors, and other payment rate policies presented in the preamble of this proposed rule in terms of their estimated fiscal impact on the Medicare budget and on LTCHs.

1. Budgetary Impact

Section 123(a)(1) of the BBRA requires that the PPS developed for LTCHs ''maintain budget neutrality.'' We believe that the statute's mandate for budget neutrality (BN) applies only to the first year of the implementation of the LTCH PPS (that is, FY 2003). Therefore, in calculating the FY 2003 standard Federal rate under § 412.523(d)(2), we set total estimated payments for FY 2003 under the LTCH PPS so that estimated aggregate payments under the LTCH PPS are estimated to equal the amount that would have been paid if the LTCH PPS had not been implemented.

2. Impact on Providers

The basic methodology for determining a per discharge LTCH PPS payment is set forth in § 412.515 through § 412.536. In addition to the basic MS–LTC–DRG payment (standard Federal rate multiplied by the MS–LTC–DRG relative weight), we make adjustments for differences in area wage levels, COLA for Alaska and Hawaii, and SSOs. Furthermore, LTCHs may also receive HCO payments for those cases that qualify based on the threshold established each rate year.

To understand the impact of the proposed changes to the LTCH PPS payments discussed in section IV. of this proposed rule on different categories of LTCHs for the 2009 LTCH PPS rate year, it is necessary to estimate payments per discharge for the 2008 LTCH PPS rate year using the rates, factors and policies established in the RY 2008 LTCH PPS final rule (72 FR 26870 through 27029), the RY 2008 LTCH PPS correction notice (72 FR 36613 through 36616) and the applicable sections of MMSEA (as described in greater detail below in section XVI.B.3. of this proposed rule). It is also necessary to estimate the proposed payments per discharge that would be made under the proposed LTCH PPS rates, factors and policies for the 2009 LTCH PPS rate year (as discussed in the preamble of this proposed rule). We also evaluated the change in estimated 2008 LTCH PPS rate year payments to estimated proposed 2009 LTCH PPS rate year payments (on a per discharge basis) for each category of LTCHs.

Hospital groups were based on characteristics provided in the OSCAR data, FY 2003 through FY 2005 cost report data in HCRIS, and PSF data. Hospitals with incomplete characteristics were grouped into the ''unknown'' category. Hospital groups include the following:

- Location: Large Urban/Other Urban/Rural.
- Participation date.
- Ownership control.
- Census region.
- Bed size.

To estimate the impacts of the proposed payment rates and policy changes among the various categories of existing providers, we used LTCH cases from the FY 2006 MedPAR file to estimate payments for RY 2008 and to estimate proposed payments for RY 2009 for 394 LTCHs. While currently there are just under 400 LTCHs, the most recent growth is predominantly in for-profit LTCHs that provide respiratory and ventilator-dependent patient care. We believe that the discharges from the FY 2006 MedPAR data for the 394 LTCHs in our database, which includes 265 proprietary LTCHs, provide sufficient representation in the MS–LTC–DRGs containing discharges for patients who received LTCH care for the most commonly treated LTCH patients' diagnoses.

3. Calculation of Prospective Payments

For purposes of this impact analysis, to estimate per discharge payments under the LTCH PPS, we simulated payments on a case-by-case basis using LTCH claims for the FY 2006 MedPAR files. In modeling estimated LTCH PPS payments for both RY 2008 and RY 2009 in this impact analysis, we applied the RY 2008 standard Federal rate (that is, $38,086.04) provided for by sections 114(e)(1) and (2) of Public Law 110–173, and the SSO policy provided for by section 114(c)(3) of the MMSEA7 (that is, excluding the revisions to the SSO policy at § 412.529(c)(3)(i) of the regulations). Although we realize that the effective date for the change in the SSO policy during RY 2008 in the MMSEA is December 29, 2007, and the revised standard Federal rate for RY 2008 is not applicable for discharges occurring on or after July 1, 2007 and before April 1, 2008, for purposes of this impact analysis, in estimating RY 2008 LTCH PPS payments we applied both the revised SSO policy and revised standard Federal rate for all of RY 2008. Similarly, in modeling LTCH PPS payments to project the average change in estimated payments per discharge from RY 2008 to RY 2009 due to the proposed change in the standard Federal rate (column 6 of Table 9), rather than using the RY 2008 standard Federal rate finalized in the RY 2008 final rule, we compared the RY 2008 ''base rate'' (which we interpret to mean the standard Federal rate) mandated by section 114(e)(1) of the Medicare, Medicaid and SCHIP Extension Act of 2007 (that is, $38,086.04), to the proposed RY 2009 standard Federal rate of $39,076.28 (that is, $38,086.04 updated by 2.6 percent, as discussed in section IV.E. of this proposed rule) in order to appropriately estimate the effect of updating the rate by 2.6 percent. We took this approach for the impact analysis in this proposed rule since for the last 3 months of the 2008 LTCH PPS rate year (that is, April 2008 through June 2008), which is the 3-month period immediately preceding the start of the 2009 LTCH PPS rate year, LTCHs will be paid in accordance with the RY 2008 standard Federal rate and SSO policy established by section 114 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. Therefore, for purposes of the impact analysis in this proposed rule, we modeled the projected changes in estimated payments from RY 2008 to RY 2009 based on computing estimated RY 2008 LTCH PPS payments using a standard Federal rate of $38,086.04 and the corresponding change to the SSO policy, which excludes the revisions to the SSO policy at § 412.529(c)(3)(i), as if those policies were applicable to all discharges occurring during RY 2008. (Additional information on section 114 of the Medicare, Medicaid and SCHIP Extension Act of 2007 can be found at section I.A. of this proposed rule.)

Furthermore, in modeling estimated LTCH PPS payments for both RY 2008 and RY 2009 in this impact analysis, we applied the RY 2008 and proposed RY 2009 adjustments for area wage differences (as described in section IV.F.1. of the preamble of this proposed rule), and the COLA for Alaska and Hawaii (as described in section IV.F.2. of the preamble of this proposed rule). Specifically, we adjusted for area wage differences for estimated 2008 LTCH PPS rate year payments using the current LTCH PPS labor-related share of 75.788 percent (72 FR 26892), the wage index values established in the Tables 1 and 2 of the Addendum of the RY 2008 final rule (72 FR 26996 through 27019) and the COLA factors established in Table 3 of the preamble of the RY 2008 final rule (72 FR 26894). Similarly, we adjusted for area wage differences for estimated 2009 LTCH PPS rate year payments using the proposed LTCH PPS labor-related share of 75.920 percent (see section IV.D.1.c. of this proposed rule), the proposed wage index values presented in the Tables 1 and 2 of the Addendum of this proposed rule and the proposed COLA factors established in Table 3 of the preamble of this proposed rule.

As discussed above, we also accounted for the payment policy for SSOs. We also estimated additional payments that would be made for HCOs (as described in section IV.F.3. of this proposed rule). As noted in section IV.F.4. of this proposed rule, we are not proposing to make adjustments for rural location, geographic reclassification, indirect medical education costs, or a DSH payment for the treatment of low-income patients because our most recent data analysis that reflects LTCH behavior subsequent to the implementation of the LTCH PPS indicates that proposing payment adjustments for geographic reclassification, rural location, DSH, or indirect medical education costs would not improve the accuracy of payments

made under the LTCH PPS to LTCHs. (See Section IV.F.4).

These impacts reflect the estimated ''losses'' or ''gains'' among the various classifications of LTCHs for the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year based on the proposed payment rates and policy changes presented in this proposed rule. Table 9 illustrates the estimated aggregate impact of the LTCH PPS among various classifications of LTCHs.

- The first column, LTCH Classification, identifies the type of LTCH.
- The second column lists the number of LTCHs of each classification type.
- The third column identifies the number of LTCH cases.
- The fourth column shows the estimated payment per discharge for the 2008 LTCH PPS rate year (as described above).
- The fifth column shows the estimated proposed payment per discharge for the 2009 LTCH PPS rate year (as described above).
- The sixth column shows the percentage change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for proposed changes to the standard Federal rate (as discussed in section IV.E. of the preamble of this proposed rule).
- The seventh column shows the percentage change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for proposed changes to the area wage adjustment at § 412.525(c) (as discussed in section IV.D.1. of the preamble of this proposed rule).
- The eighth column shows the percentage change in estimated payments per discharge from the 2008 LTCH PPS rate year (column 4) to the 2009 LTCH PPS rate year (column 5) for all proposed changes.

TABLE 9.—PROJECTED IMPACT OF PROPOSED PAYMENT RATE AND PAYMENT RATE POLICY CHANGES TO LTCH PPS PAYMENTS FOR RY 2009

(Estimated 2008 LTCH PPS Rate Year Payments Compared to Estimated Proposed 2009 LTCH PPS Rate Year Payments *)

LTCH Classification	Number of LTCHs	Number of LTCH PPS cases	Average estimated RY 2008 LTCH PPS payment per case [1]	Average estimated proposed RY 2009 LTCH PPS payment per case [2]	Percent change in estimated payments per discharge from RY 2008 to RY 2009 for proposed changes to the Federal rate [3]	Percent change in estimated payments per discharge from RY 2008 to RY 2009 for proposed changes to the area wage adjustment [4]	Percent change in estimated payments per discharge from RY 2008 to RY 2009 for all changes [5]
ALL PROVIDERS	394	134,160	$32,166	$33,092	2.2	−0.1	2.9
BY LOCATION:							
RURAL	25	6,076	26,951	27,643	2.4	−0.5	2.6
URBAN	369	128,084	32,414	33,351	2.2	−0.1	2.9
LARGE	193	78,292	33,732	34,736	2.2	−0.1	3.0
OTHER	176	49,792	30,341	31,172	2.3	−0.3	2.7
BY PARTICIPATION DATE:							
BEFORE OCT. 1983	28	9,779	27,864	28,849	2.2	0.4	3.5
OCT. 1983—SEPT. 1993	46	21,101	33,189	34,175	2.2	−0.1	3.0
OCT. 1993—SEPT. 2002	204	74,145	32,207	33,082	2.3	−0.3	2.7
AFTER OCTOBER 2002	112	28,598	32,793	33,783	2.3	0.0	3.0
UNKNOWN	4	537	31,300	32,442	2.3	0.7	3.6
BY OWNERSHIP TYPE:							
VOLUNTARY	88	27,948	31,061	32,017	2.2	0.0	3.1
PROPRIETARY	265	100,047	32,415	33,314	2.2	−0.2	2.8
GOVERNMENT	25	3,692	33,984	35,155	2.1	0.1	3.4
UNKNOWN	16	2,473	31,864	33,177	2.3	1.1	4.1
BY CENSUS REGION:							
NEW ENGLAND	20	9,776	27,177	28,213	2.2	0.7	3.8
MIDDLE ATLANTIC	36	10,756	31,851	32,629	2.2	−0.6	2.4
SOUTH ATLANTIC	50	13,544	35,730	36,822	2.2	0.0	3.1
EAST NORTH CENTRAL	70	19,552	35,316	36,289	2.2	−0.2	2.8
EAST SOUTH CENTRAL	30	8,667	32,736	33,565	2.2	−0.5	2.5
WEST NORTH CENTRAL	18	5,350	34,325	35,378	2.2	0.0	3.1
WEST SOUTH CENTRAL	130	51,441	28,779	29,538	2.3	−0.3	2.6
MOUNTAIN	22	5,804	35,089	36,143	2.2	0.0	3.0
PACIFIC	18	9,270	41,129	42,633	2.1	0.6	3.7
BY BED SIZE:							
BEDS: 0–24	33	4,797	30,110	30,888	2.4	−0.5	2.6
BEDS: 25–49	195	45,212	32,404	33,305	2.2	−0.2	2.8
BEDS: 50–74	72	26,064	32,145	33,040	2.2	−0.2	2.8
BEDS: 75–124	52	23,503	33,212	34,246	2.2	0.1	3.1
BEDS: 125–199	21	17,567	32,088	33,013	2.2	−0.2	2.9
BEDS: 200 +	21	17,017	30,781	31,717	2.2	0.0	3.0

[1] Estimated 2009 LTCH PPS rate year payments based on the proposed payment rates and policy changes presented in the preamble of this proposed rule.

[2] Estimated 2008 LTCH PPS rate year payments based on the rates, factors and policies established in the RY 2008 LTCH PPS final rule (72 FR 26870 through 27029), the RY 2008 LTCH PPS correction notice (72 FR 36613 through 36616) and the applicable sections of the Medicare, Medicaid, and SCHIP Extension Act of 2007. As described in section XVI.B.3. of this proposed rule, although we are aware that there are different effective dates for the various provisions of MMSEA that affect RY 2008 LTCH PPS payments, for the purpose of this impact analysis, we modeled estimated RY 2008 payments as if those provisions were applicable to discharges for the entire 2008 LTCH PPS rate year. Specifically, in estimating RY 2008 LTCH PPS payments, we applied the RY 2008 Federal rate provided for by sections 114(e)(1) of the MMSEA (that is, $38,086.04), and the SSO policy provided for by section 114(c)(3) of the MMSA (that is, excluding the revisions to the SSO policy at § 412.529(c)(3)(i)).

[3] Percent change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for the proposed changes to the Federal rate, as discussed in section IV.E. of the preamble of this proposed rule. (Note, because about 34 percent of all LTCH cases are projected to receive a payment adjustment under the SSO policy that is based either on the estimated cost of the case or the ''blend option'' (which is based in part on the ''IPPS comparable amount'') rather than the proposed Federal rate in RY 2009, the percent change in estimated payments per discharge due to the proposed changes to the Federal rate for most of the categories of LTCHs, 2.2 percent, is somewhat less than the proposed update to the Federal rate of 2.6 percent.)

[4] Percent change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for proposed changes to the area wage adjustment at § 412.525(c) (as discussed in section V.F.1. of the preamble of this proposed rule).

[5] Percent change in estimated payments per discharge from the 2008 LTCH PPS rate year (as described in section XVI.B.3. of this proposed rule) to the 2009 LTCH PPS rate year for all of the proposed changes presented in the preamble of this proposed rule. Note, this column, which shows the percent change in estimated payments per discharge for all proposed changes, may not equal the sum of the percent changes in estimated payments per discharge for proposed changes to the Federal rate (column 6) and the proposed changes to the area wage adjustment (column 7) due to the effect of estimated changes in both payments to SSO cases that are paid based on estimated costs and aggregate HCO payments (as discussed this proposed rule), as well as other interactive effects that cannot be isolated.

4. Results

Based on the most recent available data (as described previously for 394 LTCHs), we have prepared the following summary of the impact (as shown in Table 9) of the proposed LTCH PPS payment rate and policy changes presented in this proposed rule. The impact analysis in Table 9 shows that estimated payments per discharge are expected to increase approximately 2.9 percent, on average, for all LTCHs from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year as a result of the proposed payment rate and policy changes presented in this proposed rule. We note that although we are proposing a 2.6 percent increase to the standard Federal rate for RY 2009, based on the latest proposed market basket estimate (3.5 percent) and offset by the proposed coding and documentation adjustment (0.9 percent), for most categories of LTCHs, the impact analysis shown in Table 9 (column 7) only shows a 2.2 percent increase in estimated payments per discharge from RY 2008 to RY 2009 as a result of the proposed change to the standard Federal rate. The reason that this column shows an estimated 2.2 percent increase rather than an estimated 2.6 percent increase (based on the proposed 2.6 percent update to the standard Federal rate) is because about 34 percent of all LTCH cases are projected to receive an SSO payment that would be based either on the estimated cost of the case or the ''blend option'' (which is based in part on the ''IPPS comparable amount'') rather than a LTCH PPS payment based on the proposed standard Federal rate. Therefore, because over 30 percent of *all* LTCH PPS cases would receive a payment that is not based fully on the proposed standard Federal rate, the percent change in estimated payments per discharge due to the proposed changes to the standard Federal rate for most categories of LTCHs shown in Table 9 is projected to be 2.2 percent, which is somewhat less than the 2.6 percent proposed update to the standard Federal rate. In addition to the proposed 2.6 percent increase to the standard Federal rate for RY 2009, the projected percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year of 2.9 percent shown in Table 9 (see column 8) reflects the effect of increased HCO and SSO payments as we discussed previously. That is, in calculating the estimated increase in payments for HCO and SSO from RY 2008 to RY 2009, we increased costs by applying the proposed market basket (approximately 3.5 percent). As noted above, SSOs comprise approximately 16 percent of total LTCH PPS payments and high cost outliers comprise approximately 8 percent of estimated total LTCH PPS payments. Furthermore, as discussed previously in this regulatory impact analysis, the average increase in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year, on average, for all LTCHs of approximately 2.9 (as shown in Table 9) was determined by comparing estimated RY 2009 LTCH PPS payments (using the proposed rates and policies discussed in the preamble of this rule) to estimated RY 2008 LTCH PPS payments (as described above in section XVI.B.3. of this regulatory impact analysis).

a. Location

Based on the most recent available data, the majority of LTCHs are in urban areas. Approximately 6 percent of the LTCHs are identified as being located in a rural area, and approximately 5 percent of all LTCH cases are treated in these rural hospitals. The impact analysis presented in Table 9 shows that the average percent increase in estimated payments per discharge for the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year for all hospitals is 2.9 percent for all proposed changes. For rural LTCHs, the percent change for all proposed changes is estimated to be 2.6 percent, while for urban LTCHs, we estimate this increase to be 2.9 percent. Large urban LTCHs are projected to experience a 3.0 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, while other urban LTCHs are projected to experience a 2.7 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, as shown in Table 9. Rural LTCHs are projected to experience a somewhat lower than average increase in estimated payments per discharge for all proposed changes primarily due to the proposed changes to the area wage adjustment. That is, 68 percent of the LTCHs in these areas are expected to experience a decrease in their wage index value from RY 2008 to RY 2009. In addition, because all LTCHs in rural areas have a wage index value that is less than 1.0, the proposed increase to the labor-related share (from 75.788 percent to 75.920 percent) would also contribute to the estimated lower than average increase in estimated payments from RY 2008 to RY 2009 shown in column 8 of Table 9.

b. Participation Date

LTCHs are grouped by participation date into four categories: (1) Before October 1983; (2) between October 1983 and September 1993; (3) between October 1993 and September 2002; and (4) after October 2002. Based on the most recent available data, the majority (approximately 52 percent) of the LTCH cases are in hospitals that began

participating between October 1993 and September 2002, and are projected to experience a slightly lower than average increase of 2.7 percent in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, as shown in Table 9, mostly because approximately 66 percent of hospitals in this category are projected to experience a decrease in their wage index value from RY 2008 to RY 2009. In addition, because the majority of hospitals (80 percent) in this category have a wage index of less than 1.0, the proposed increase to the labor-related share (from 75.788 percent to 75.920 percent) would also contribute to the slightly lower than average increase in payments from RY 2008 to RY 2009 shown in column 8 of Table 9.

LTCHs that began participating in Medicare between October 1983 and September 1993, and those LTCHs that began participating in Medicare after October 2002 are projected to experience close to the average percent increase (3.0 percent) in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, as shown in Table 9. Approximately 12 percent of LTCHs began participating in Medicare between October 1983 and September 1993 while approximately 28 percent of LTCHs began participating in Medicare after October 2002 (that is, the beginning of the LTCH PPS, which was implemented for cost reporting periods beginning on or after October 1, 2002).

LTCHs that began participating before October 1983 are projected to experience a 3.5 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year (see Table 9). We are projecting that LTCHs that began participating in Medicare before October 1983 would experience a larger than average increase in estimated payments for RY 2009 as compared to RY 2008 primarily due to the proposed changes to the area wage adjustment. This is because approximately 68 percent of the LTCHs that began participating in Medicare before October 1983 are located in areas where the proposed RY 2009 wage index value would be greater than the RY 2008 wage index value. In addition, because a significant number (75 percent) of hospitals in this category have a wage index of greater than 1.0, the proposed increase to the labor-related share (from 75.788 percent to 75.920 percent) would also contribute to the larger than average increase in estimated payments from RY 2008 to RY 2009.

c. Ownership Control

Other than LTCHs whose ownership control type is unknown, LTCHs are grouped into three categories based on ownership control type: Voluntary; proprietary; and government. Based on the most recent available data, approximately 6 percent of LTCHs are identified as government-owned and operated (see Table 9). We expect that for these government-owned and operated LTCHs, estimated 2009 LTCH PPS rate year payments per discharge would increase 3.4 percent in comparison to the 2008 LTCH PPS rate year, as shown in Table 9. We are projecting that government-run LTCHs would experience a somewhat higher than average increase in estimated payments in RY 2009 as compared to RY 2008 primarily due to the effect of the proposed changes to the area wage adjustment. Specifically, LTCHs in this category are projected to experience a higher than average increase in their estimated payments from RY 2008 to RY 2009 due to the proposed changes to the area wage adjustment primarily because the majority (60 percent) of hospitals in this category would experience an increase in their wage index value from RY 2008 to RY 2009.

We project that estimated 2009 LTCH PPS rate year payments per discharge for voluntary LTCHs, which account for approximately 22 percent of LTCHs, would increase near the average (3.1 percent) in comparison to estimated 2008 LTCH PPS rate year payments (see Table 9).

The majority (approximately 67 percent) of LTCHs are identified as proprietary. We project that 2009 LTCH PPS rate year estimated payments per discharge for these proprietary LTCHs would increase 2.8 percent (nearly average) in comparison to the 2008 LTCH PPS rate year (see Table 9).

d. Census Region

Estimated payments per discharge for the 2009 LTCH PPS rate year are projected to increase for LTCHs located in all regions in comparison to the 2008 LTCH PPS rate year. The percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for all regions is largely attributable to the proposed increase in the standard Federal rate.

Of the 9 census regions, we project that the increase in proposed 2009 LTCH PPS rate year estimated payments per discharge in comparison to the 2008 LTCH PPS rate year would have the largest impact on LTCHs in the New England and Pacific regions (3.8 percent and 3.7 percent, respectively; see Table 9). LTCHs located in both the New England and Pacific regions are expected to experience a larger than average increase in estimated payments due to the proposed changes in the area wage adjustment (0.7 percent for the New England region, and 0.6 percent for the Pacific region, as shown in Table 9). This is because approximately 85 percent of LTCHs located in the New England region and all of the LTCHs in the Pacific region are projected to experience an increase in their wage index values for proposed RY 2009 as compared to RY 2008.

We project that in comparison to the 2008 LTCH PPS rate year, the proposed 2009 LTCH PPS rate year estimated payments per discharge for LTCHs in the East North Central region would increase by approximately 2.8 percent (nearly average). For LTCHs located in the South Atlantic and West North Central regions, we estimate that the slightly higher than average projected increase (3.1 percent for each region) in estimated payments per discharge for the 2009 LTCH PPS rate year compared to the 2008 LTCH PPS rate year is largely a result of the proposed changes to the area wage adjustment. That is, we estimate that approximately 58 percent of hospitals in the South Atlantic region and approximately 55 percent of hospitals in the West North Central region would experience an increase in their wage index values from RY 2008 to RY 2009. For LTCHs located in the Middle Atlantic, East South Central and West South Central regions, we estimate that the somewhat lower than average projected increase (2.4 percent, 2.5 percent, and 2.6 percent, respectively) in estimated payments per discharge for the 2009 LTCH PPS rate year compared to the 2008 LTCH PPS rate year is largely a result of the proposed changes to the area wage adjustment. Specifically, nearly all LTCHs in the Middle Atlantic region (approximately 89 percent) and the majority of the hospitals in the East South Central region (approximately 67 percent) and West South Central region (approximately 75 percent) would experience a decrease in their wage index value from RY 2008 to RY 2009. Furthermore, because a significant number of hospitals in these categories have a wage index of less than 1.0, the proposed increase to the labor-related share (from 75.788 percent to 75.920 percent) would also contribute to the lower than average estimated increase in payments from RY 2008 to RY 2009.

e. Bed Size

LTCHs were grouped into seven categories based on bed size: 0–24 beds; 25–49 beds; 50–74 beds; 75–124 beds; 125–199 beds; greater than 200 beds; and unknown bed size.

We are projecting an increase in estimated 2009 LTCH PPS rate year payments per discharge in comparison to the 2008 LTCH PPS rate year for all bed size categories. Most LTCHs are in bed size categories where estimated 2009 LTCH PPS rate year payments per discharge are projected to increase at or near the average increase of 2.9 percent for all LTCHs, in comparison to the 2008 LTCH PPS rate year (that is, all LTCH bed size categories except the category of LTCHs with 0–24 beds). Specifically, estimated payments per discharge for the 2009 LTCH PPS rate year are projected to increase for LTCHs with 25–49 and 50–74 beds at 2.8 percent, for LTCHs with 75–124 beds at 3.1 percent, for LTCHs with 125–199 beds at 2.9 percent, and for LTCHs with more than 200 beds, at 3.0 percent.

Estimated payments per discharge for the 2009 LTCH PPS rate year for LTCHs with 0–24 beds are projected to have a somewhat lower than average increase in comparison to all hospitals (2.6 percent; see Table 9). This lower than average increase in estimated payments per discharge for LTCHs with 0–24 beds is largely due to the proposed changes to the area wage adjustment. Specifically, LTCHs in this category are expected to experience a larger than average decrease in their payments from RY 2008 to RY 2009 due to the proposed changes to the area wage adjustment primarily because approximately 73 percent of the hospitals in this category are projected to experience a decrease in their wage index value from RY 2008 to RY 2009. In addition, because the majority (approximately 91 percent) of hospitals in this category have a wage index of less than 1.0, the proposed increase to the labor-related share (from 75.788 percent to 75.920 percent) would also contribute to the smaller than average increase in estimated payments from RY 2008 to RY 2009 shown in Table 9.

5. Effect on the Medicare Program

Based on actuarial projections, an estimate of Medicare spending (total estimated Medicare program payments) for LTCH services over the next 5 years based on current LTCH PPS policy (as established in previous LTCH PPS final rules) is shown in Table 4 in section IV.D. of the preamble of this proposed rule. As noted previously, we project that the provisions of this proposed rule would result in an increase in estimated aggregate LTCH PPS payments in RY 2009 of approximately 124 million (or about 2.9 percent) for the 394 LTCHs in our database.

Consistent with the statutory requirement for BN, as we discussed in the August 30, 2002 final rule that implemented the LTCH PPS, in developing the LTCH PPS, we intended estimated aggregate payments under the LTCH PPS in FY 2003 be projected to equal the estimated aggregate payments that would have been made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the BN calculations for determining the FY 2003 standard Federal rate used the best available data and necessarily reflects assumptions. As discussed in section IV.D. of this proposed rule, section 114(c)(4) of the Medicare, Medicaid and SCHIP Extension Act of 2007 provides that the ''Secretary shall not, for the 3-year period beginning on the date of the enactment of this Act, make the one-time prospective adjustment to long-term care hospital prospective payment rates provided for in section 412.523(d)(3) of title 42, Code of Federal Regulations, or any similar provision.'' That provision delays the effective date of any one-time budget neutrality adjustment until no earlier than December 29, 2010. However, prior to the enactment of the MMSEA of 2007, we had developed a methodology for evaluating the appropriateness of proposing a one-time budget neutrality adjustment under existing § 412.523(d)(3). In order to inform the public of our thinking, and to stimulate comments for our consideration during the three-year delay in implementing any adjustment under the recent legislation, we have presented our analysis and its results in section IV.D. of the preamble of this proposed rule.

6. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that paying prospectively for LTCH services would enhance the efficiency of the Medicare program.

D. Accounting Statement

As discussed in section XVI.A.1., the impact analysis of this proposed rule results in an increase in estimated aggregate payments of approximately $124 million (or about 2.9 percent) for the 394 LTCHs in our database. Therefore, as required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 10, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 10 provides our best estimate of the proposed increase in Medicare payments under the LTCH PPS as a result of the provisions presented in this proposed rule based on the data for the 394 LTCHs in our database. All expenditures are classified as transfers to Medicare providers (that is, LTCHs).

TABLE 10.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2008 LTCH PPS RATE YEAR TO THE 2009 LTCH PPS RATE YEAR

[In millions]

Category	Transfers
Annualized Monetized Transfers	Positive transfer—Estimated increase in expenditures: $124 million.
From Whom To Whom?	Federal Government To LTCH Medicare Providers.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and section 124 of Pub. L. 106–113 (113 Stat. 1501A–332).

Subpart O—Prospective Payment System for Long Term Care Hospitals

2. Section 412.503 is amended by—

A. Revising the definition of ''Long-term care hospital prospective payment system rate year''.

B. Adding new definitions of ''rural'' and ''urban'' in alphabetical order.

The revision and additions read as follows:

§ 412.503 Definitions.

* * * * *

Long-term care hospital prospective payment system rate year means—

(1) From July 1, 2003 and ending on or before June 30, 2008, the 12-month period of July 1 through June 30.

(2) From July 1, 2008 and ending on September 30, 2009, the 15-month period of July 1, 2008 through September 30, 2009.

(3) Beginning on or after October 1, 2009, the 12-month period of October 1 through September 30.

* * * * *

Rural area means—(1) For cost reporting periods beginning on or after October 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before July 1, 2005, an area defined in § 412.62(f)(1)(iii);

(2) For discharges occurring on or after July 1, 2005, and before July 1, 2008, an area as defined in § 412.64(b)(1)(ii)(C); and

(3) For discharges occurring on or after July 1, 2008, any area outside an urban area.

Urban area means—(1) For cost reporting periods beginning on or after October 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before July 1, 2005, an area defined in § 412.62(f)(1)(ii);

(2) For discharges occurring on or after July 1, 2005, and before July 1, 2008, an urban area means an area as defined in § 412.64(b)(1)(ii)(A) and (B); and

(3) For discharges occurring on or after July 1, 2008, a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget.

3. Section 412.523 is amended by—

A. Adding new paragraph (c)(3)(v).

B. Revising paragraph (d)(2) by removing the phrase ''sections 1886(b)(2) and (b)(3) of the Act'' and adding ''section 1886(b)(2)(E) and (b)(3)(J) of the Act'' in its place.

C. Revising paragraph (d)(3).

The addition and revisions read as follows:

§ 412.523 Methodology for calculating the Federal prospective payment rates.

* * * * *

(c) * * *

(3) * * *

(v) *For long-term care hospital prospective payment system rate year beginning July 1, 2008 and ending September 30, 2009.* The standard Federal rate for long-term care hospital prospective payment system rate year beginning July 1, 2008 and ending September 30, 2009 is the standard Federal rate for the previous long-term care hospital prospective payment system rate year updated by 2.6 percent. The standard Federal rate is adjusted, as appropriate, as described in paragraph (d) of this section.

* * * * *

(d)(3) The Secretary reviews payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates no earlier than December 29, 2010, so that the effect of any significant difference between the data used in the original computations and more recent data to determine budget neutrality is not perpetuated in the prospective payment rates for future years.

* * * * *

4. Section 412.525 is amended by revising paragraph (c) to read as follows:

§ 412.525 Adjustments to the Federal prospective payment.

* * * * *

(c) *Adjustments for area levels.* The labor portion of a long-term care hospital's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index (established by CMS), which reflects the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area as determined in accordance with the definitions set forth in § 412.503) of the hospital compared to the national average level of hospital wages and wage-related costs. The appropriate wage index (established by CMS) is updated annually.

5. Section 412.529 is amended by revising paragraphs (d)(4)(ii)(B) and (d)(4)(iii)(B) to read as follows:

§ 412.529 Special payment provision for short-stay outliers.

* * * * *

(d) * * *

(4) * * *

(ii) * * *

(B) Is adjusted for different area wage levels based on the geographic classifications set forth at § 412.503 and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for nonreclassified hospitals. For LTCHs located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors.

* * * * *

(iii) * * *

(B) Is adjusted for the applicable geographic adjustment factors, including local cost variation based on the geographic classifications set forth at § 412.503 and the applicable full hospital inpatient prospective payment system wage index value for nonreclassified hospitals, and applicable large urban location cost of living adjustment factors for LTCHs in Alaska and Hawaii, if applicable.

* * * * *

6. Section 412.534 is amended by revising paragraphs (d)(1), (f)(2)(ii), and (f)(3)(ii) to read as follows:

§ 412.534 Special payment provisions for long-term care hospitals within hospitals and satellites of long-term care hospitals.

* * * * *

(d) * * *

(1) Subject to paragraphs (g) and (h) of this section, in the case of a long-term care hospital or satellite facility that is located in a rural area as defined in § 412.503 and is co-located with another hospital for any cost reporting period beginning on or after October 1, 2004 in which the long-term care hospital or satellite facility has a discharged Medicare inpatient population of whom more than 50 percent were admitted to the long-term care hospital or satellite facility from the co-located hospital, payments for the patients who are admitted from the co-located hospital and who cause the long-term care hospital or satellite facility to exceed the 50 percent threshold for discharged patients who were admitted from the co-located hospital are the lesser of the amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (f) of this section, to the amount that were otherwise payable under subpart A, § 412.1(a). Payments

for the remainder of the long-term care hospital's or satellite facility's patients are made under the rules in this subpart at § 412.500 through § 412.541 with no adjustment under this section.

* * * * *

(f) * * *

(2) * * *

(ii) Is adjusted for different area wage levels based on the geographic classifications set forth at § 412.503 and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for non-reclassified hospitals. For LTCHs located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors;

* * * * *

(3) * * *

(ii) Is adjusted by the applicable geographic adjustment factors, including local cost variation based on the applicable geographic classifications set forth at § 412.503 and the applicable full hospital inpatient prospective payment system wage index value for nonreclassified hospitals, applicable large urban location and cost of living adjustment factors for LTCHs for Alaska and Hawaii, if applicable;

* * * * *

7. Section 412.535 is amended by—

A. Revising the introductory text.

B. Revising paragraph (a).

C. Redesignating paragraph (b) as paragraph (d).

D. Adding new paragraphs (b) and (c).

The revisions and additions read as follows:

§ 412.535 Publication of the Federal prospective payment rates.

Except as specified in paragraph (b) of this section, CMS publishes information pertaining to the long-term care hospital prospective payment system effective for each annual update in the **Federal Register**.

(a) For the period beginning on or after July 1, 2003, and ending on June 30, 2008, information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of each long term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(b) For the period beginning on July 1, 2008 and ending on September 30, 2009, information of the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of the long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(c) For the period beginning on or after October 1, 2009, information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before August 1 prior to the start of the Federal fiscal year which begins October 1, unless for good cause it is published after August 1, but before September 1.

* * * * *

7. Section 412.536 is amended by revising paragraphs (c)(1), (e)(2)(ii), and (e)(3)(ii) to read as follows.

§ 412.536 Special payment provisions for long-term care hospitals and satellites of long-term care hospitals that discharged Medicare patients admitted from a hospital not located in the same building or on the same campus as the long term care hospital or satellite of the long-term care hospital.

* * * * *

(c) *Special treatment of rural hospitals.* (1) Subject to paragraph (f) of this section, in the case of a long-term care hospital or long-term care hospital satellite facility that is located in a rural area as defined in § 412.503 that has a discharged Medicare inpatient population of whom more than 50 percent were admitted to the long-term care hospital or long term care hospital satellite facility from a hospital not co-located with the long-term care hospital or with the satellite of a long-term care hospital, payment for the Medicare discharges who are admitted from that hospital and who cause the long-term care hospital or satellite facility to exceed the 50 percent threshold for Medicare discharges is determined at the lesser of the amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (e) of this section, to the amount that is otherwise payable under subpart A, § 412.1(a). Payments for the remainder of the long-term care hospital's or long-term care hospital satellite facility's Medicare discharges admitted from that referring hospital are made under the rules in this subpart at § 412.500 through § 412.541 with no adjustment under this section.

* * * * *

(e) * * *

(2) * * *

(ii) Is adjusted for different area wage levels based on the geographic classifications defined at § 412.503 and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for non-reclassified hospitals. For long-term care hospitals located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors;

* * * * *

(3) * * *

(ii) Is adjusted by the applicable geographic adjustment factors, including local cost variation based on the applicable geographic classifications set forth at § 412.503 and the applicable full hospital inpatient prospective payment system wage index value for nonreclassified hospitals, applicable large urban location and cost of living adjustment factors for long-term care hospitals for Alaska and Hawaii, if applicable;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare— Supplementary Medical Insurance Program)

Dated: December 13, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: January 16, 2008.

Michael O. Leavitt,

Secretary.

The following addenda will not appear in the Code of Federal Regulations.

Addendum

Addendum A contains the tables referred to throughout the preamble to this proposed rule. The tables presented below are as follows:

Table 1.—Proposed Long-Term Care Hospital Wage Index for Urban Areas for Discharges Occurring from July 1, 2008 through September 30, 2009

Table 2.—Proposed Long-Term Care Hospital Wage Index for Rural Areas for Discharges Occurring from July 1, 2008 through September 30, 2009

Table 3.—FY 2008 MS–LTC–DRG Relative Weights, Geometric Average Length of Stay, Short-Stay Outlier Threshold and IPPS-Comparable Threshold (for Short-Stay Outlier Cases) (effective for discharges occurring on or after July 1, 2008 through September 30, 2009). (**Note:** This table is the same information provided in Table 11 of the FY 2008

IPPS final rule (72 FR 48143 through 48157), which has been reprinted here for convenience.)

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009

CBSA code	Urban area (constituent counties)	Proposed wage index
10180	Abilene, TX	0.7957
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3448
	Aguada Municipio, PR.	
	Aguadilla Municipio, PR.	
	Añasco Municipio, PR.	
	Isabela Municipio, PR.	
	Lares Municipio, PR.	
	Moca Municipio, PR.	
	Rincón Municipio, PR.	
	San Sebastián Municipio, PR.	
10420	Akron, OH	0.8794
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8514
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8588
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9554
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.7979
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA–NJ	0.9865
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8618
	Blair County, PA.	
11100	Amarillo, TX	0.9116
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	1.0046
	Story County, IA.	
11260	Anchorage, AK	1.1913
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.8827
	Madison County, IN.	
11340	Anderson, SC	0.9086
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0539
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7926
	Calhoun County, AL.	
11540	Appleton, WI	0.9598
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.9185
	Buncombe County, NC.	
	Haywood County, NC.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	1.0517
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9828
	Barrow County, GA.	
	Bartow County, GA.	
	Butts County, GA.	
	Carroll County, GA.	
	Cherokee County, GA.	
	Clayton County, GA.	
	Cobb County, GA.	
	Coweta County, GA.	
	Dawson County, GA.	
	DeKalb County, GA.	
	Douglas County, GA.	
	Fayette County, GA.	
	Forsyth County, GA.	
	Fulton County, GA.	
	Gwinnett County, GA.	
	Haralson County, GA.	
	Heard County, GA.	
	Henry County, GA.	
	Jasper County, GA.	
	Lamar County, GA.	
	Meriwether County, GA.	
	Newton County, GA.	
	Paulding County, GA.	
	Pickens County, GA.	
	Pike County, GA.	
	Rockdale County, GA.	
	Spalding County, GA.	
	Walton County, GA.	
12100	Atlantic City, NJ	1.2198
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.8090
	Lee County, AL.	
12260	Augusta-Richmond County, GA–SC	0.9645
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9544
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.1051
	Kern County, CA.	
12580	Baltimore-Towson, MD	1.0134
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	0.9978
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2603
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8034
	Ascension Parish, LA.	
	East Baton Rouge Parish, LA.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	East Feliciana Parish, LA.	
	Iberville Parish, LA.	
	Livingston Parish, LA.	
	Pointe Coupee Parish, LA.	
	St. Helena Parish, LA.	
	West Baton Rouge Parish, LA.	
	West Feliciana Parish, LA.	
12980	Battle Creek, MI	1.0179
	Calhoun County, MI.	
13020	Bay City, MI	0.8897
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8531
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1474
	Whatcom County, WA.	
13460	Bend, OR	1.0942
	Deschutes County, OR.	
13644	Bethesda-Gaithersburg-Frederick, MD	1.0511
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8666
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8949
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8898
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7225
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8192
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8915
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.9325
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9465
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1792
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0426
	Boulder County, CO.	
14540	Bowling Green, KY	0.8159
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0904
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2735
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.8914

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Cameron County, TX.	
15260	Brunswick, GA	0.9475
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9568
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8747
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9660
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.1215
	Middlesex County, MA.	
15804	Camden, NJ	1.0411
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.8935
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9396
	Lee County, FL.	
16180	Carson City, NV	1.0003
	Carson City, NV.	
16220	Casper, WY	0.9385
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8852
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9392
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8289
	Boone County, WV.	
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston, SC	0.9124
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC–SC	0.9520
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	0.9277
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN–GA	0.8994
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.9308
	Laramie County, WY.	
16974	Chicago-Naperville-Joliet, IL	1.0715

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Cook County, IL.	
	DeKalb County, IL.	
	DuPage County, IL.	
	Grundy County, IL.	
	Kane County, IL.	
	Kendall County, IL.	
	McHenry County, IL.	
	Will County, IL.	
17020	Chico, CA	1.1290
	Butte County, CA.	
17140	Cincinnati-Middletown, OH–KY–IN	0.9784
	Dearborn County, IN.	
	Franklin County, IN.	
	Ohio County, IN.	
	Boone County, KY.	
	Bracken County, KY.	
	Campbell County, KY.	
	Gallatin County, KY.	
	Grant County, KY.	
	Kenton County, KY.	
	Pendleton County, KY.	
	Brown County, OH.	
	Butler County, OH.	
	Clermont County, OH.	
	Hamilton County, OH.	
	Warren County, OH.	
17300	Clarksville, TN–KY	0.8251
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.8052
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9339
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9532
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9358
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9719
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8658
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8800
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA–AL	0.8729
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9537
	Bartholomew County, IN.	
18140	Columbus, OH	1.0085
	Delaware County, OH.	
	Fairfield County, OH.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8588
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.0959
	Benton County, OR.	
19060	Cumberland, MD–WV	0.8294
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	0.9915
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	
	Hunt County, TX.	
	Kaufman County, TX.	
	Rockwall County, TX.	
19140	Dalton, GA	0.8760
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.8957
	Vermilion County, IL.	
19260	Danville, VA	0.8240
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA–IL	0.8830
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9190
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.7885
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8074
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9031
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0718
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines-West Des Moines, IA	0.9226
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	0.9999
	Wayne County, MI.	
20020	Dothan, AL	0.7270
	Geneva County, AL.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	1.0099
	Kent County, DE.	
20220	Dubuque, IA	0.9058
	Dubuque County, IA.	
20260	Duluth, MN–WI	0.9975
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham, NC	0.9816
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9475
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison, NJ	1.1181
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	
	Somerset County, NJ.	
20940	El Centro, CA	0.8914
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8711
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9611
	Elkhart County, IN.	
21300	Elmira, NY	0.8264
	Chemung County, NY.	
21340	El Paso, TX	0.8989
	El Paso County, TX.	
21500	Erie, PA	0.8495
	Erie County, PA.	
21660	Eugene-Springfield, OR	1.0932
	Lane County, OR.	
21780	Evansville, IN–KY	0.8662
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1050
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4375
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND–MN	0.8042
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.9587
	San Juan County, NM.	
22180	Fayetteville, NC	0.9368
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR–MO	0.8742
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.1687
	Coconino County, AZ.	
22420	Flint, MI	1.1220
	Genesee County, MI.	
22500	Florence, SC	0.8249
	Darlington County, SC.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.7680
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	0.9667
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9897
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0229
	Broward County, FL.	
22900	Fort Smith, AR–OK	0.7933
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8743
	Okaloosa County, FL.	
23060	Fort Wayne, IN	0.9284
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9693
	Johnson County, TX.	
	Parker County, TX.	
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.0993
	Fresno County, CA.	
23460	Gadsden, AL	0.8159
	Etowah County, AL.	
23540	Gainesville, FL	0.9196
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.9216
	Hall County, GA.	
23844	Gary, IN	0.9224
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8256
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.9288
	Wayne County, NC.	
24220	Grand Forks, ND–MN	0.7881
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9864
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9315
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.8675
	Cascade County, MT.	
24540	Greeley, CO	0.9658
	Weld County, CO.	
24580	Green Bay, WI	0.9727
	Brown County, WI.	
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.9010
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9402
	Greene County, NC.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Pitt County, NC.	
24860	Greenville-Mauldin-Easley, SC	0.9860
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.3064
	Arroyo Municipio, PR.	
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.8773
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD–WV	0.9013
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	1.0499
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9280
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.8867
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.0959
	Hartford County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7366
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.9028
	Alexander County, NC.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980	Hinesville-Fort Stewart, GA	0.9187
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.9006
	Ottawa County, MI.	
26180	Honolulu, HI	1.1556
	Honolulu County, HI.	
26300	Hot Springs, AR	0.9109
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7892
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Sugar Land-Baytown, TX	0.9939
	Austin County, TX.	
	Brazoria County, TX.	
	Chambers County, TX.	
	Fort Bend County, TX.	
	Galveston County, TX.	
	Harris County, TX.	
	Liberty County, TX.	
	Montgomery County, TX.	
	San Jacinto County, TX.	
	Waller County, TX.	
26580	Huntington-Ashland, WV–KY–OH	0.9041
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.9146
	Limestone County, AL.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Madison County, AL.	
26820	Idaho Falls, ID	0.9264
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis-Carmel, IN	0.9844
	Boone County, IN.	
	Brown County, IN.	
	Hamilton County, IN.	
	Hancock County, IN.	
	Hendricks County, IN.	
	Johnson County, IN.	
	Marion County, IN.	
	Morgan County, IN.	
	Putnam County, IN.	
	Shelby County, IN.	
26980	Iowa City, IA	0.9568
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9630
	Tompkins County, NY.	
27100	Jackson, MI	0.9329
	Jackson County, MI.	
27140	Jackson, MS	0.8011
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8676
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.9021
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8079
	Onslow County, NC.	
27500	Janesville, WI	0.9702
	Rock County, WI.	
27620	Jefferson City, MO	0.8478
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.7677
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.7543
	Cambria County, PA.	
27860	Jonesboro, AR	0.7790
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.8951
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0433
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	1.0238
	Kankakee County, IL.	
28140	Kansas City, MO–KS	0.9504
	Franklin County, KS.	
	Johnson County, KS.	
	Leavenworth County, KS.	
	Linn County, KS.	
	Miami County, KS.	
	Wyandotte County, KS.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Bates County, MO.	
	Caldwell County, MO.	
	Cass County, MO.	
	Clay County, MO.	
	Clinton County, MO.	
	Jackson County, MO.	
	Lafayette County, MO.	
	Platte County, MO.	
	Ray County, MO.	
28420	Kennewick-Richland-Pasco, WA	1.0075
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.8249
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN–VA	0.7658
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9556
	Ulster County, NY.	
28940	Knoxville, TN	0.8036
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.9591
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI–MN	0.9685
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.8869
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8247
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7777
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL–WI	1.0603
	Lake County, IL.	
	Kenosha County, WI.	
29420	Lake Havasu City-Kingman, AZ	0.9333
	Mohave County, AZ.	
29460	Lakeland, FL	0.8661
	Polk County, FL.	
29540	Lancaster, PA	0.9252
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	1.0119
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.8093
	Webb County, TX.	
29740	Las Cruces, NM	0.8676
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.1799
	Clark County, NV.	
29940	Lawrence, KS	0.8227
	Douglas County, KS.	
30020	Lawton, OK	0.8025
	Comanche County, OK.	
30140	Lebanon, PA	0.8192

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Lebanon County, PA.	
30300	Lewiston, ID–WA	0.9454
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9193
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9191
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9424
	Allen County, OH.	
30700	Lincoln, NE	1.0051
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock-Conway, AR	0.8863
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT–ID	0.9183
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8717
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.0827
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.1771
	Los Angeles County, CA.	
31140	Louisville-Jefferson County, KY–IN	0.9065
	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.	
31180	Lubbock, TX	0.8680
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8732
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9541
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8069
	Madera County, CA.	
31540	Madison, WI	1.0935
	Columbia County, WI.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0273
	Hillsborough County, NH.	
31900	Mansfield, OH	0.9271
	Richland County, OH.	
32420	Mayagüez, PR	0.3711
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Mission, TX	0.9123
	Hidalgo County, TX.	
32780	Medford, OR	1.0318
	Jackson County, OR.	
32820	Memphis, TN–MS–AR	0.9250
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.2120
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	1.0002
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.8914
	LaPorte County, IN.	
33260	Midland, TX	1.0017
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	1.0214
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN–WI	1.1093
	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.	
33540	Missoula, MT	0.8953
	Missoula County, MT.	
33660	Mobile, AL	0.8033
	Mobile County, AL.	
33700	Modesto, CA	1.1962
	Stanislaus County, CA.	
33740	Monroe, LA	0.7832
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.9414
	Monroe County, MI.	
33860	Montgomery, AL	0.8088
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8321
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7388
	Grainger County, TN.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0529
	Skagit County, WA.	
34620	Muncie, IN	0.8214
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	0.9836
	Muskegon County, MI.	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8634
	Horry County, SC.	
34900	Napa, CA	1.4476
	Napa County, CA.	
34940	Naples-Marco Island, FL	0.9487
	Collier County, FL.	
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	0.9689
	Cannon County, TN.	
	Cheatham County, TN.	
	Davidson County, TN.	
	Dickson County, TN.	
	Hickman County, TN.	
	Macon County, TN.	
	Robertson County, TN.	
	Rutherford County, TN.	
	Smith County, TN.	
	Sumner County, TN.	
	Trousdale County, TN.	
	Williamson County, TN.	
	Wilson County, TN.	
35004	Nassau-Suffolk, NY	1.2640
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ–PA	1.1862
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1871
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.8897
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	
	St. Tammany Parish, LA.	
35644	New York-White Plains-Wayne, NY–NJ	1.3115
	Bergen County, NJ.	
	Hudson County, NJ.	
	Passaic County, NJ.	
	Bronx County, NY.	
	Kings County, NY.	
	New York County, NY.	
	Putnam County, NY.	
	Queens County, NY.	
	Richmond County, NY.	
	Rockland County, NY.	
	Westchester County, NY.	
35660	Niles-Benton Harbor, MI	0.9141
	Berrien County, MI.	
35980	Norwich-New London, CT	1.1432
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.5685
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8627
	Marion County, FL.	
36140	Ocean City, NJ	1.0988

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Cape May County, NJ.	
36220	Odessa, TX	1.0042
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.9000
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.8815
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.1512
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE–IA	0.9561
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando-Kissimmee, FL	0.9226
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9551
	Winnebago County, WI.	
36980	Owensboro, KY	0.8652
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1852
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9325
	Brevard County, FL.	
37380	Palm Coast, FL	0.8945
	Flager County, FL.	
37460	Panama City-Lynn Haven, FL	0.8313
	Bay County, FL.	
37620	Parkersburg-Marietta-Vienna, WV–OH	0.8105
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.8647
	George County, MS.	
	Jackson County, MS.	
37764	Peabody, MA	1.0650
	Essex County, MA.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8281
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.9299
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0925
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
38060	Phoenix-Mesa-Scottsdale, AZ	1.0264
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.7839
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8525
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0091
	Berkshire County, MA.	
38540	Pocatello, ID	0.9465
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4450
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	1.0042
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR–WA	1.1498
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie, FL	1.0016
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0982
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	1.0020
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI–MA	1.0574
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9557
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8851
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.9254
	Charlotte County, FL.	
39540	Racine, WI	0.9498
	Racine County, WI.	
39580	Raleigh-Cary, NC	0.9839
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.8811
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9356
	Berks County, PA.	
39820	Redding, CA	1.3541

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.0715
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9425
	Amelia County, VA.	
	Caroline County, VA.	
	Charles City County, VA.	
	Chesterfield County, VA.	
	Cumberland County, VA.	
	Dinwiddie County, VA.	
	Goochland County, VA.	
	Hanover County, VA.	
	Henrico County, VA.	
	King and Queen County, VA.	
	King William County, VA.	
	Louisa County, VA.	
	New Kent County, VA.	
	Powhatan County, VA.	
	Prince George County, VA.	
	Sussex County, VA.	
	Colonial Heights City, VA.	
	Hopewell City, VA.	
	Petersburg City, VA.	
	Richmond City, VA.	
40140	Riverside-San Bernardino-Ontario, CA	1.1100
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.8691
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.0755
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.8858
	Livingston County, NY.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9814
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0111
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.9001
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.9042
	Floyd County, GA.	
40900	Sacramento–Arden-Arcade–Roseville, CA	1.3505
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8812
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0549
	Benton County, MN.	
	Stearns County, MN.	
41100	St. George, UT	0.9358
	Washington County, UT.	
41140	St. Joseph, MO–KS	0.8762
	Doniphan County, KS.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO–IL	0.9024
	Bond County, IL.	
	Calhoun County, IL.	
	Clinton County, IL.	
	Jersey County, IL.	
	Macoupin County, IL.	
	Madison County, IL.	
	Monroe County, IL.	
	St. Clair County, IL.	
	Crawford County, MO.	
	Franklin County, MO.	
	Jefferson County, MO.	
	Lincoln County, MO.	
	St. Charles County, MO.	
	St. Louis County, MO.	
	Warren County, MO.	
	Washington County, MO.	
	St. Louis City, MO.	
41420	Salem, OR	1.0572
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.4775
	Monterey County, CA.	
41540	Salisbury, MD	0.8994
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9399
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8579
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.8834
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1492
	San Diego County, CA.	
41780	Sandusky, OH	0.8822
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5195
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4729
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5735
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4528
	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.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Canóvanas Municipio, PR. Carolina Municipio, PR. Cataño Municipio, PR. Cayey Municipio, PR. Ciales Municipio, PR. Cidra Municipio, PR. Comerío Municipio, PR. Corozal Municipio, PR. Dorado Municipio, PR. Florida Municipio, PR. Guaynabo Municipio, PR. Gurabo Municipio, PR. Hatillo Municipio, PR. Humacao Municipio, PR. Juncos Municipio, PR. Las Piedras Municipio, PR. Loíza Municipio, PR. Manatí Municipio, PR. Maunabo Municipio, PR. Morovis Municipio, PR. Naguabo Municipio, PR. Naranjito Municipio, PR. Orocovis Municipio, PR. Quebradillas Municipio, PR. Río Grande Municipio, PR. San Juan Municipio, PR. San Lorenzo Municipio, PR. Toa Alta Municipio, PR. Toa Baja Municipio, PR. Trujillo Alto Municipio, PR. Vega Alta Municipio, PR. Vega Baja Municipio, PR. Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA.	1.2488
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA.	1.1766
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA.	1.1714
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA.	1.6122
42140	Santa Fe, NM Santa Fe County, NM.	1.0734
42220	Santa Rosa-Petaluma, CA Sonoma County, CA.	1.4696
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL. Sarasota County, FL.	0.9933
42340	Savannah, GA Bryan County, GA. Chatham County, GA. Effingham County, GA.	0.9131
42540	Scranton–Wilkes-Barre, PA Lackawanna County, PA. Luzerne County, PA. Wyoming County, PA.	0.8457
42644	Seattle-Bellevue-Everett, WA King County, WA. Snohomish County, WA.	1.1572
42680	Sebastian-Vero Beach, FL Indian River County, FL.	0.9412
43100	Sheboygan, WI Sheboygan County, WI.	0.8975
43300	Sherman-Denison, TX Grayson County, TX.	0.8320
43340	Shreveport-Bossier City, LA Bossier Parish, LA. Caddo Parish, LA. De Soto Parish, LA.	0.8476
43580	Sioux City, IA–NE–SD	0.9251

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.9563
	Lincoln County, SD.	
	McCook County, SD.	
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN–MI	0.9617
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9422
	Spartanburg County, SC.	
44060	Spokane, WA	1.0455
	Spokane County, WA.	
44100	Springfield, IL	0.8944
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0366
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8695
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8694
	Clark County, OH.	
44300	State College, PA	0.8768
	Centre County, PA.	
44700	Stockton, CA	1.1855
	San Joaquin County, CA.	
44940	Sumter, SC	0.8599
	Sumter County, SC.	
45060	Syracuse, NY	0.9910
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.1055
	Pierce County, WA.	
45220	Tallahassee, FL	0.9025
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9020
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.8805
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.7770
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9431
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8538
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0699
	Mercer County, NJ.	
46060	Tucson, AZ	0.9245
	Pima County, AZ.	
46140	Tulsa, OK	0.8340
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	
	Rogers County, OK.	
	Tulsa County, OK.	
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8303
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.9114
	Smith County, TX.	
46540	Utica-Rome, NY	0.8486
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.8098
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.4666
	Solano County, CA.	
47020	Victoria, TX	0.8302
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	1.0133
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA–NC	0.8818
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
47300	Visalia-Porterville, CA	1.0091
	Tulare County, CA.	
47380	Waco, TX	0.8518
	McLennan County, TX.	
47580	Warner Robins, GA	0.9128
	Houston County, GA.	
47644	Warren-Troy-Farmington Hills, MI	1.0001
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC–VA–MD–WV	1.0855
	District of Columbia, DC.	
	Calvert County, MD.	
	Charles County, MD.	
	Prince George's County, MD.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	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	0.8519
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.9679
	Marathon County, WI.	
48260	Weirton-Steubenville, WV–OH	0.7924
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	1.1469
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9728
	Palm Beach County, FL.	
48540	Wheeling, WV–OH	0.6961
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.9062
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	0.7920
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8043
	Lycoming County, PA.	
48864	Wilmington, DE–MD–NJ	1.0824
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9410
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA–WV	0.9913
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.9118
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.1287
	Worcester County, MA.	
49420	Yakima, WA	1.0267
	Yakima County, WA.	
49500	Yauco, PR	0.3284
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Peñuelas Municipio, PR. Yauco Municipio, PR.	
49620	York-Hanover, PA York County, PA.	0.9359
49660	Youngstown-Warren-Boardman, OH–PA Mahoning County, OH. Trumbull County, OH. Mercer County, PA.	0.9002
49700	Yuba City, CA Sutter County, CA. Yuba County, CA.	1.0756
49740	Yuma, AZ Yuma County, AZ.	0.9488

TABLE 2.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009

CBSA code	Nonurban area	Proposed wage index
01	Alabama	0.7533
02	Alaska	1.2109
03	Arizona	0.8479
04	Arkansas	0.7371
05	California	1.2023
06	Colorado	0.9704
07	Connecticut	1.1119
08	Delaware	0.9727
10	Florida	0.8465
11	Georgia	0.7659
12	Hawaii	1.0612
13	Idaho	0.7920
14	Illinois	0.8335
15	Indiana	0.8576
16	Iowa	0.8566
17	Kansas	0.7981
18	Kentucky	0.7793
19	Louisiana	0.7373
20	Maine	0.8476
21	Maryland	0.9034
22	Massachusetts	1.1589
23	Michigan	0.8953
24	Minnesota	0.9079
25	Mississippi	0.7700
26	Missouri	0.7930
27	Montana	0.8379
28	Nebraska	0.8849
29	Nevada	0.9272
30	New Hampshire	1.0470
31	New Jersey *	.....
32	New Mexico	0.8940
33	New York	0.8268
34	North Carolina	0.8603
35	North Dakota	0.7182
36	Ohio	0.8714
37	Oklahoma	0.7492
38	Oregon	0.9906
39	Pennsylvania	0.8385
41	Rhode Island *	.....
42	South Carolina	0.8656
43	South Dakota	0.8549
44	Tennessee	0.7723
45	Texas	0.7968
46	Utah	0.8116
47	Vermont	0.9919
49	Virginia	0.7896
50	Washington	1.0259
51	West Virginia	0.7454
52	Wisconsin	0.9667
53	Wyoming	0.9287

* All counties within the State are classified as urban.

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
001	Heart transplant or implant of heart assist system w MCC	0.0000	0.0	0.0	0.0
002	Heart transplant or implant of heart assist system w/o MCC	0.0000	0.0	0.0	0.0
003	ECMO or trach w MV 96+ hrs or PDX exc face, mouth & neck w maj O.R.	4.2380	64.3	53.6	53.6
004	Trach w MV 96+ hrs or PDX exc face, mouth & neck w/o maj O.R	3.0249	46.7	38.9	38.9
005	Liver transplant w MCC or intestinal transplant	0.0000	0.0	0.0	0.0
006	Liver transplant w/o MCC	0.0000	0.0	0.0	0.0
007	Lung transplant	0.0000	0.0	0.0	0.0
008	Simultaneous pancreas/kidney transplant	0.0000	0.0	0.0	0.0
009	Bone marrow transplant	1.1417	29.0	24.2	24.2
010	Pancreas transplant	1.1417	29.0	24.2	0.0
011	Tracheostomy for face, mouth & neck diagnoses w MCC	1.5545	35.2	29.3	25.2
012	Tracheostomy for face, mouth & neck diagnoses w CC	1.5545	35.2	29.3	16.7
013	Tracheostomy for face, mouth & neck diagnoses w/o CC/MCC	1.5545	35.2	29.3	11.2
020	Intracranial vascular procedures w PDX hemorrhage w MCC	1.5545	35.2	29.3	29.3
021	Intracranial vascular procedures w PDX hemorrhage w CC	0.5472	20.3	16.9	16.9

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
022	Intracranial vascular procedures w PDX hemorrhage w/o CC/MCC	0.5472	20.3	16.9	16.1
023	Cranio w major dev impl/acute complex CNS PDX w MCC or chemo implant.	1.5545	35.2	29.3	22.2
024	Cranio w major dev impl/acute complex CNS PDX w/o MCC	0.5472	20.3	16.9	15.8
025	Craniotomy & endovascular intracranial procedures w MCC	1.5545	35.2	29.3	22.1
026	Craniotomy & endovascular intracranial procedures w CC	1.5545	35.2	29.3	13.2
027	Craniotomy & endovascular intracranial procedures w/o CC/MCC	1.5545	35.2	29.3	7.5
028	Spinal procedures w MCC	1.1417	29.0	24.2	24.2
029	Spinal procedures w CC or spinal neurostimulators	1.1417	29.0	24.2	12.4
030	Spinal procedures w/o CC/MCC	0.5472	20.3	16.9	5.9
031	Ventricular shunt procedures w MCC	1.5545	35.2	29.3	22.9
032	Ventricular shunt procedures w CC	0.5472	20.3	16.9	9.4
033	Ventricular shunt procedures w/o CC/MCC	0.5472	20.3	16.9	4.7
034	Carotid artery stent procedure w MCC	1.5545	35.2	29.3	12.5
035	Carotid artery stent procedure w CC	1.1417	29.0	24.2	4.4
036	Carotid artery stent procedure w/o CC/MCC	1.1417	29.0	24.2	2.2
037	Extracranial procedures w MCC	1.5545	35.2	29.3	14.9
038	Extracranial procedures w CC	1.1417	29.0	24.2	5.8
039	Extracranial procedures w/o CC/MCC	1.1417	29.0	24.2	2.6
040	Periph/cranial nerve & other nerv syst proc w MCC	1.2704	36.2	30.2	22.7
041	Periph/cranial nerve & other nerv syst proc w CC or periph neurostim	1.0810	34.3	28.6	12.3
042	Periph/cranial nerve & other nerv syst proc w/o CC/MCC	0.7305	22.9	19.1	5.7
052	Spinal disorders & injuries w CC/MCC	1.0629	32.3	26.9	10.7
053	Spinal disorders & injuries w/o CC/MCC	1.0629	32.3	26.9	6.4
054	Nervous system neoplasms w MCC	0.7205	23.6	19.7	11.7
055	Nervous system neoplasms w/o MCC	0.6779	22.0	18.3	8.1
056	Degenerative nervous system disorders w MCC	0.7407	26.4	22.0	12.3
057	Degenerative nervous system disorders w/o MCC	0.6309	24.4	20.3	7.6
058	Multiple sclerosis & cerebellar ataxia w MCC	0.7305	22.9	19.1	12.5
059	Multiple sclerosis & cerebellar ataxia w CC	0.5595	22.6	18.8	8.0
060	Multiple sclerosis & cerebellar ataxia w/o CC/MCC	0.5472	20.3	16.9	6.2
061	Acute ischemic stroke w use of thrombolytic agent w MCC	0.7897	24.2	20.2	16.0
062	Acute ischemic stroke w use of thrombolytic agent w CC	0.6563	22.7	18.9	9.6
063	Acute ischemic stroke w use of thrombolytic agent w/o CC/MCC	0.5472	20.3	16.9	6.8
064	Intracranial hemorrhage or cerebral infarction w MCC	0.7746	25.1	20.9	12.7
065	Intracranial hemorrhage or cerebral infarction w CC	0.6691	23.3	19.4	8.2
066	Intracranial hemorrhage or cerebral infarction w/o CC/MCC	0.5472	20.3	16.9	5.8
067	Nonspecific cva & precerebral occlusion w/o infarct w MCC	0.5472	20.3	16.9	10.1
068	Nonspecific cva & precerebral occlusion w/o infarct w/o MCC	0.5472	20.3	16.9	5.6
069	Transient ischemia	0.5472	20.3	16.9	4.7
070	Nonspecific cerebrovascular disorders w MCC	0.7897	24.2	20.2	12.7
071	Nonspecific cerebrovascular disorders w CC	0.6563	22.7	18.9	8.8
072	Nonspecific cerebrovascular disorders w/o CC/MCC	0.5472	20.3	16.9	5.8
073	Cranial & peripheral nerve disorders w MCC	0.7849	25.6	21.3	10.2
074	Cranial & peripheral nerve disorders w/o MCC	0.6260	23.4	19.5	6.9
075	Viral meningitis w CC/MCC	0.7305	22.9	19.1	12.1
076	Viral meningitis w/o CC/MCC	0.5472	20.3	16.9	6.5
077	Hypertensive encephalopathy w MCC	0.7305	22.9	19.1	11.4
078	Hypertensive encephalopathy w CC	0.7305	22.9	19.1	7.2
079	Hypertensive encephalopathy w/o CC/MCC	0.5472	20.3	16.9	5.3
080	Nontraumatic stupor & coma w MCC	0.6312	24.6	20.5	7.8
081	Nontraumatic stupor & coma w/o MCC	0.5618	23.1	19.3	5.3
082	Traumatic stupor & coma, coma >1 hr w MCC	0.8864	29.5	24.6	10.9
083	Traumatic stupor & coma, coma >1 hr w CC	0.7305	22.9	19.1	8.6
084	Traumatic stupor & coma, coma >1 hr w/o CC/MCC	0.7305	22.9	19.1	4.9
085	Traumatic stupor & coma, coma <1 hr w MCC	0.9044	28.3	23.6	13.2
086	Traumatic stupor & coma, coma <1 hr w CC	0.7437	25.1	20.9	8.2
087	Traumatic stupor & coma, coma <1 hr w/o CC/MCC	0.6361	20.4	17.0	5.3
088	Concussion w MCC	1.1417	29.0	24.2	9.9
089	Concussion w CC	1.1417	29.0	24.2	6.0
090	Concussion w/o CC/MCC	1.1417	29.0	24.2	3.7
091	Other disorders of nervous system w MCC	0.8019	25.6	21.3	10.7
092	Other disorders of nervous system w CC	0.6704	22.0	18.3	6.9
093	Other disorders of nervous system w/o CC/MCC	0.5811	20.1	16.8	4.9
094	Bacterial & tuberculous infections of nervous system w MCC	1.0328	27.9	23.3	20.8
095	Bacterial & tuberculous infections of nervous system w CC	0.9306	27.0	22.5	14.9
096	Bacterial & tuberculous infections of nervous system w/o CC/MCC	0.9306	27.0	22.5	10.1
097	Non-bacterial infect of nervous sys exc viral meningitis w MCC	0.9289	26.8	22.3	19.6

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
098	Non-bacterial infect of nervous sys exc viral meningitis w CC	0.8629	22.7	18.9	13.7
099	Non-bacterial infect of nervous sys exc viral meningitis w/o CC/MCC	0.7305	22.9	19.1	10.1
100	Seizures w MCC	0.7904	26.5	22.1	10.1
101	Seizures w/o MCC	0.6177	21.4	17.8	5.8
102	Headaches w MCC	0.8249	25.0	20.8	8.1
103	Headaches w/o MCC	0.8249	25.0	20.8	5.0
113	Orbital procedures w CC/MCC	0.7305	22.9	19.1	9.2
114	Orbital procedures w/o CC/MCC	0.7305	22.9	19.1	4.1
115	Extraocular procedures except orbit	0.8249	25.0	20.8	7.2
116	Intraocular procedures w CC/MCC	0.8249	25.0	20.8	5.2
117	Intraocular procedures w/o CC/MCC	0.8249	25.0	20.8	2.8
121	Acute major eye infections w CC/MCC	0.7305	22.9	19.1	9.1
122	Acute major eye infections w/o CC/MCC	0.5472	20.3	16.9	6.3
123	Neurological eye disorders	0.5472	20.3	16.9	4.5
124	Other disorders of the eye w MCC	1.1417	29.0	24.2	8.4
125	Other disorders of the eye w/o MCC	0.8249	25.0	20.8	5.5
129	Major head & neck procedures w CC/MCC or major device	1.1977	26.4	22.0	8.1
130	Major head & neck procedures w/o CC/MCC	0.7305	22.9	19.1	4.8
131	Cranial/facial procedures w CC/MCC	1.5545	35.2	29.3	9.5
132	Cranial/facial procedures w/o CC/MCC	1.5545	35.2	29.3	4.0
133	Other ear, nose, mouth & throat O.R. procedures w CC/MCC	0.7305	22.9	19.1	9.4
134	Other ear, nose, mouth & throat O.R. procedures w/o CC/MCC	0.7305	22.9	19.1	3.2
135	Sinus & mastoid procedures w CC/MCC	0.7305	22.9	19.1	10.8
136	Sinus & mastoid procedures w/o CC/MCC	0.7305	22.9	19.1	3.9
137	Mouth procedures w CC/MCC	1.5545	35.2	29.3	8.7
138	Mouth procedures w/o CC/MCC	1.5545	35.2	29.3	3.7
139	Salivary gland procedures	1.5545	35.2	29.3	2.5
146	Ear, nose, mouth & throat malignancy w MCC	1.1977	26.4	22.0	16.9
147	Ear, nose, mouth & throat malignancy w CC	1.0416	24.9	20.8	9.3
148	Ear, nose, mouth & throat malignancy w/o CC/MCC	0.7305	22.9	19.1	5.6
149	Dysequilibrium	0.5472	20.3	16.9	4.2
150	Epistaxis w MCC	0.7305	22.9	19.1	8.8
151	Epistaxis w/o MCC	0.7305	22.9	19.1	4.5
152	Otitis media & URI w MCC	0.7305	22.9	19.1	7.4
153	Otitis media & URI w/o MCC	0.7305	22.9	19.1	5.2
154	Nasal trauma & deformity w MCC	0.7703	21.0	17.5	10.5
155	Nasal trauma & deformity w CC	0.7703	21.0	17.5	7.2
156	Nasal trauma & deformity w/o CC/MCC	0.7305	22.9	19.1	4.9
157	Dental & Oral Diseases w MCC	0.8249	25.0	20.8	11.3
158	Dental & Oral Diseases w CC	0.8249	25.0	20.8	7.1
159	Dental & Oral Diseases w/o CC/MCC	0.5472	20.3	16.9	4.8
163	Major chest procedures w MCC	2.2157	39.7	33.1	23.6
164	Major chest procedures w CC	1.5545	35.2	29.3	13.0
165	Major chest procedures w/o CC/MCC	1.5545	35.2	29.3	8.3
166	Other resp system O.R. procedures w MCC	2.4392	42.3	35.3	20.6
167	Other resp system O.R. procedures w CC	2.1594	38.0	31.7	13.1
168	Other resp system O.R. procedures w/o CC/MCC	1.1417	29.0	24.2	8.9
175	Pulmonary embolism w MCC	0.7160	22.0	18.3	11.6
176	Pulmonary embolism w/o MCC	0.5989	20.1	16.8	8.4
177	Respiratory infections & inflammations w MCC	0.8393	23.5	19.6	14.9
178	Respiratory infections & inflammations w CC	0.7671	22.2	18.5	11.7
179	Respiratory infections & inflammations w/o CC/MCC	0.6885	19.0	15.8	8.9
180	Respiratory neoplasms w MCC	0.8140	20.2	16.8	13.1
181	Respiratory neoplasms w CC	0.7103	19.3	16.1	9.7
182	Respiratory neoplasms w/o CC/MCC	0.5472	20.3	16.9	6.9
183	Major chest trauma w MCC	0.5472	20.3	16.9	11.5
184	Major chest trauma w CC	0.5472	20.3	16.9	7.3
185	Major chest trauma w/o CC/MCC	0.5472	20.3	16.9	5.0
186	Pleural effusion w MCC	0.8259	23.6	19.7	12.2
187	Pleural effusion w CC	0.7042	21.1	17.6	8.8
188	Pleural effusion w/o CC/MCC	0.7042	21.1	17.6	6.5
189	Pulmonary edema & respiratory failure	0.9743	24.0	20.0	10.1
190	Chronic obstructive pulmonary disease w MCC	0.6858	20.9	17.4	10.2
191	Chronic obstructive pulmonary disease w CC	0.6256	19.5	16.3	7.9
192	Chronic obstructive pulmonary disease w/o CC/MCC	0.5832	17.2	14.3	6.2
193	Simple pneumonia & pleurisy w MCC	0.7088	21.6	18.0	10.9
194	Simple pneumonia & pleurisy w CC	0.6429	19.8	16.5	8.2
195	Simple pneumonia & pleurisy w/o CC/MCC	0.5962	18.2	15.2	6.3

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
196	Interstitial lung disease w MCC	0.6529	20.0	16.7	11.6
197	Interstitial lung disease w CC	0.6133	19.6	16.3	8.5
198	Interstitial lung disease w/o CC/MCC	0.5956	19.7	16.4	6.7
199	Pneumothorax w MCC	0.8249	25.0	20.8	13.8
200	Pneumothorax w CC	0.7305	22.9	19.1	8.3
201	Pneumothorax w/o CC/MCC	0.5472	20.3	16.9	6.5
202	Bronchitis & asthma w CC/MCC	0.6903	21.1	17.6	6.9
203	Bronchitis & asthma w/o CC/MCC	0.5650	17.1	14.3	5.3
204	Respiratory signs & symptoms	0.8187	22.0	18.3	4.4
205	Other respiratory system diagnoses w MCC	0.8207	22.4	18.7	9.0
206	Other respiratory system diagnoses w/o MCC	0.7667	21.5	17.9	5.5
207	Respiratory system diagnosis w ventilator support 96+ hours	2.0266	34.3	28.6	22.6
208	Respiratory system diagnosis w ventilator support <96 hours	1.5514	27.8	23.2	12.5
215	Other heart assist system implant	0.8249	25.0	20.8	20.5
216	Cardiac valve & oth maj cardiothoracic proc w card cath w MCC	1.5545	35.2	29.3	28.7
217	Cardiac valve & oth maj cardiothoracic proc w card cath w CC	0.8249	25.0	20.8	17.7
218	Cardiac valve & oth maj cardiothoracic proc w card cath w/o CC/MCC	0.8249	25.0	20.8	12.7
219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w MCC	1.5545	35.2	29.3	22.6
220	Cardiac valve & oth maj cardiothoracic proc w/o card cath w CC	0.8249	25.0	20.8	12.5
221	Cardiac valve & oth maj cardiothoracic proc w/o card cath w/o CC/MCC	0.8249	25.0	20.8	8.7
222	Cardiac defib implant w cardiac cath w AMI/HF/shock w MCC	1.5545	35.2	29.3	20.9
223	Cardiac defib implant w cardiac cath w AMI/HF/shock w/o MCC	1.5545	35.2	29.3	11.0
224	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w MCC	1.5545	35.2	29.3	18.2
225	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w/o MCC	1.5545	35.2	29.3	9.2
226	Cardiac defibrillator implant w/o cardiac cath w MCC	1.5545	35.2	29.3	16.8
227	Cardiac defibrillator implant w/o cardiac cath w/o MCC	1.5545	35.2	29.3	4.1
228	Other cardiothoracic procedures w MCC	1.5410	35.0	29.2	23.2
229	Other cardiothoracic procedures w CC	1.2681	30.8	25.7	13.5
230	Other cardiothoracic procedures w/o CC/MCC	0.8249	25.0	20.8	10.2
231	Coronary bypass w PTCA w MCC	1.5545	35.2	29.3	20.9
232	Coronary bypass w PTCA w/o MCC	0.8249	25.0	20.8	13.1
233	Coronary bypass w cardiac cath w MCC	1.5545	35.2	29.3	21.0
234	Coronary bypass w cardiac cath w/o MCC	0.8249	25.0	20.8	12.2
235	Coronary bypass w/o cardiac cath w MCC	1.5545	35.2	29.3	17.0
236	Coronary bypass w/o cardiac cath w/o MCC	0.8249	25.0	20.8	9.0
237	Major cardiovasc procedures w MCC or thoracic aortic anuerysm repair	1.5545	35.2	29.3	19.6
238	Major cardiovasc procedures w/o MCC	0.8249	25.0	20.8	8.1
239	Amputation for circ sys disorders exc upper limb & toe w MCC	1.3794	37.4	31.2	24.7
240	Amputation for circ sys disorders exc upper limb & toe w CC	1.2872	36.1	30.1	16.6
241	Amputation for circ sys disorders exc upper limb & toe w/o CC/MCC	1.1417	29.0	24.2	10.7
242	Permanent cardiac pacemaker implant w MCC	1.5545	35.2	29.3	14.5
243	Permanent cardiac pacemaker implant w CC	1.5545	35.2	29.3	8.5
244	Permanent cardiac pacemaker implant w/o CC/MCC	1.1417	29.0	24.2	4.6
245	AICD lead & generator procedures	0.7305	22.9	19.1	4.9
246	Perc cardiovasc proc w drug-eluting stent w MCC or 4+ vessels/stents	0.8249	25.0	20.8	9.1
247	Perc cardiovasc proc w drug-eluting stent w/o MCC	0.8249	25.0	20.8	3.3
248	Perc cardiovasc proc w non-drug-eluting stent w MCC or 4+ ves/stents	1.5545	35.2	29.3	10.3
249	Perc cardiovasc proc w non-drug-eluting stent w/o MCC	1.5545	35.2	29.3	3.9
250	Perc cardiovasc proc w/o coronary artery stent or AMI w MCC	0.8249	25.0	20.8	12.7
251	Perc cardiovasc proc w/o coronary artery stent or AMI w/o MCC	0.8249	25.0	20.8	4.6
252	Other vascular procedures w MCC	1.5410	35.0	29.2	15.1
253	Other vascular procedures w CC	1.2681	30.8	25.7	10.2
254	Other vascular procedures w/o CC/MCC	0.8249	25.0	20.8	4.3
255	Upper limb & toe amputation for circ system disorders w MCC	1.1713	33.7	28.1	16.7
256	Upper limb & toe amputation for circ system disorders w CC	0.9516	29.4	24.5	12.3
257	Upper limb & toe amputation for circ system disorders w/o CC/MCC	0.9516	29.4	24.5	8.2
258	Cardiac pacemaker device replacement w MCC	1.5545	35.2	29.3	12.6
259	Cardiac pacemaker device replacement w/o MCC	1.5545	35.2	29.3	4.0
260	Cardiac pacemaker revision except device replacement w MCC	1.5545	35.2	29.3	17.4
261	Cardiac pacemaker revision except device replacement w CC	0.5472	20.3	16.9	6.4
262	Cardiac pacemaker revision except device replacement w/o CC/MCC	0.5472	20.3	16.9	3.7
263	Vein ligation & stripping	0.8249	25.0	20.8	9.2
264	Other circulatory system O.R. procedures	1.0667	31.6	26.3	15.4
280	Acute myocardial infarction, discharged alive w MCC	0.7263	21.4	17.8	12.0
281	Acute myocardial infarction, discharged alive w CC	0.6931	22.8	19.0	7.8
282	Acute myocardia infarction, discharged alive w/o CC/MCC	0.6931	22.8	19.0	5.1
283	Acute myocardial infarction, expired w MCC	0.6609	17.0	14.2	9.0
284	Acute myocardial infarction, expired w CC	0.6609	17.0	14.2	5.4

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
285	Acute myocardial infarction, expired w/o CC/MCC	0.6609	17.0	14.2	3.3
286	Circulatory disorders except AMI, w card cath w MCC	1.1417	29.0	24.2	11.6
287	Circulatory disorders except AMI, w card cath w/o MCC	0.8249	25.0	20.8	5.0
288	Acute & subacute endocarditis w MCC	0.9082	26.4	22.0	19.7
289	Acute & subacute endocarditis w CC	0.8580	26.4	22.0	13.7
290	Acute & subacute endocarditis w/o CC/MCC	0.7664	25.5	21.3	10.6
291	Heart failure & shock w MCC	0.6968	21.4	17.8	10.7
292	Heart failure & shock w CC	0.6252	20.4	17.0	7.7
293	Heart failure & shock w/o CC/MCC	0.5775	18.5	15.4	5.6
294	Deep vein thrombophlebitis w CC/MCC	0.8249	25.0	20.8	8.6
295	Deep vein thrombophlebitis w/o CC/MCC	0.8249	25.0	20.8	6.7
296	Cardiac arrest, unexplained w MCC	0.6609	17.0	14.2	4.8
297	Cardiac arrest, unexplained w CC	0.6609	17.0	14.2	2.7
298	Cardiac arrest, unexplained w/o CC/MCC	0.6609	17.0	14.2	1.9
299	Peripheral vascular disorders w MCC	0.7152	24.8	20.7	11.2
300	Peripheral vascular disorders w CC	0.6150	22.2	18.5	8.2
301	Peripheral vascular disorders w/o CC/MCC	0.5557	19.4	16.2	6.0
302	Atherosclerosis w MCC	0.6170	21.9	18.3	6.9
303	Atherosclerosis w/o MCC	0.5673	20.5	17.1	3.9
304	Hypertension w MCC	0.8249	25.0	20.8	8.3
305	Hypertension w/o MCC	0.5856	22.6	18.8	4.4
306	Cardiac congenital & valvular disorders w MCC	0.8786	24.2	20.2	10.2
307	Cardiac congenital & valvular disorders w/o MCC	0.7767	23.1	19.3	5.5
308	Cardiac arrhythmia & conduction disorders w MCC	0.7431	24.7	20.6	9.3
309	Cardiac arrhythmia & conduction disorders w CC	0.5940	20.4	17.0	6.2
310	Cardiac arrhythmia & conduction disorders w/o CC/MCC	0.5184	17.0	14.2	4.2
311	Angina pectoris	0.7305	22.9	19.1	3.5
312	Syncope & collapse	0.5336	19.7	16.4	4.9
313	Chest pain	0.5472	20.3	16.9	3.1
314	Other circulatory system diagnoses w MCC	0.8123	23.1	19.3	11.8
315	Other circulatory system diagnoses w CC	0.7114	21.6	18.0	7.3
316	Other circulatory system diagnoses w/o CC/MCC	0.6243	18.9	15.8	4.7
326	Stomach, esophageal & duodenal proc w MCC	1.8646	36.2	30.2	28.1
327	Stomach, esophageal & duodenal proc w CC	1.5545	35.2	29.3	16.8
328	Stomach, esophageal & duodenal proc w/o CC/MCC	0.5472	20.3	16.9	7.2
329	Major small & large bowel procedures w MCC	1.5545	35.2	29.3	25.3
330	Major small & large bowel procedures w CC	1.5545	35.2	29.3	14.6
331	Major small & large bowel procedures w/o CC/MCC	0.5472	20.3	16.9	8.7
332	Rectal resection w MCC	1.5057	36.1	30.1	22.6
333	Rectal resection w CC	1.3309	30.7	25.6	13.0
334	Rectal resection w/o CC/MCC	0.8249	25.0	20.8	8.6
335	Peritoneal adhesiolysis w MCC	1.5545	35.2	29.3	22.9
336	Peritoneal adhesiolysis w CC	0.7305	22.9	19.1	14.6
337	Peritoneal adhesiolysis w/o CC/MCC	0.7305	22.9	19.1	9.3
338	Appendectomy w complicated principal diag w MCC	0.8884	24.1	20.1	16.7
339	Appendectomy w complicated principal diag w CC	0.7667	22.2	18.5	10.8
340	Appendectomy w complicated principal diag w/o CC/MCC	0.6856	19.9	16.6	6.6
341	Appendectomy w/o complicated principal diag w MCC	0.8884	24.1	20.1	12.0
342	Appendectomy w/o complicated principal diag w CC	0.7667	22.2	18.5	6.8
343	Appendectomy w/o complicated principal diag w/o CC/MCC	0.6856	19.9	16.6	3.4
344	Minor small & large bowel procedures w MCC	0.8884	24.1	20.1	19.1
345	Minor small & large bowel procedures w CC	0.7667	22.2	18.5	10.9
346	Minor small & large bowel procedures w/o CC/MCC	0.6856	19.9	16.6	7.4
347	Anal & stomal procedures w MCC	1.1417	29.0	24.2	13.8
348	Anal & stomal procedures w CC	0.8249	25.0	20.8	8.9
349	Anal & stomal procedures w/o CC/MCC	0.5472	20.3	16.9	4.7
350	Inguinal & femoral hernia procedures w MCC	1.5545	35.2	29.3	13.6
351	Inguinal & femoral hernia procedures w CC	1.1417	29.0	24.2	7.4
352	Inguinal & femoral hernia procedures w/o CC/MCC	0.8249	25.0	20.8	3.7
353	Hernia procedures except inguinal & femoral w MCC	0.8249	25.0	20.8	14.5
354	Hernia procedures except inguinal & femoral w CC	0.8249	25.0	20.8	8.2
355	Hernia procedures except inguinal & femoral w/o CC/MCC	0.8249	25.0	20.8	4.4
356	Other digestive system O.R. procedures w MCC	1.5057	36.1	30.1	22.5
357	Other digestive system O.R. procedures w CC	1.3309	30.7	25.6	13.3
358	Other digestive system O.R. procedures w/o CC/MCC	0.8249	25.0	20.8	7.6
368	Major esophageal disorders w MCC	1.1417	29.0	24.2	10.5
369	Major esophageal disorders w CC	1.1417	29.0	24.2	7.1
370	Major esophageal disorders w/o CC/MCC	1.1417	29.0	24.2	5.2

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
371	Major gastrointestinal disorders & peritoneal infections w MCC	0.8884	24.1	20.1	14.1
372	Major gastrointestinal disorders & peritoneal infections w CC	0.7667	22.2	18.5	10.6
373	Major gastrointestinal disorders & peritoneal infections w/o CC/MCC	0.6856	19.9	16.6	7.7
374	Digestive malignancy w MCC	0.8340	22.9	19.1	14.4
375	Digestive malignancy w CC	0.7563	19.7	16.4	9.7
376	Digestive malignancy w/o CC/MCC	0.5472	20.3	16.9	6.5
377	G.I. hemorrhage w MCC	0.7032	22.5	18.8	10.3
378	G.I. hemorrhage w CC	0.6334	21.5	17.9	6.8
379	G.I. hemorrhage w/o CC/MCC	0.5472	20.3	16.9	5.2
380	Complicated peptic ulcer w MCC	0.8249	25.0	20.8	11.4
381	Complicated peptic ulcer w CC	0.8249	25.0	20.8	7.9
382	Complicated peptic ulcer w/o CC/MCC	0.7305	22.9	19.1	5.5
383	Uncomplicated peptic ulcer w MCC	0.8249	25.0	20.8	9.1
384	Uncomplicated peptic ulcer w/o MCC	0.7305	22.9	19.1	5.9
385	Inflammatory bowel disease w MCC	0.8874	24.6	20.5	14.4
386	Inflammatory bowel disease w CC	0.7655	22.9	19.1	9.0
387	Inflammatory bowel disease w/o CC/MCC	0.7655	22.9	19.1	6.9
388	G.I. obstruction w MCC	0.8967	22.8	19.0	12.0
389	G.I. obstruction w CC	0.7893	21.9	18.3	8.0
390	G.I. obstruction w/o CC/MCC	0.7893	21.9	18.3	5.5
391	Esophagitis, gastroent & misc digest disorders w MCC	0.8509	24.4	20.3	8.7
392	Esophagitis, gastroent & misc digest disorders w/o MCC	0.6943	20.4	17.0	5.5
393	Other digestive system diagnoses w MCC	0.9915	25.5	21.3	11.4
394	Other digestive system diagnoses w CC	0.8523	22.0	18.3	7.7
395	Other digestive system diagnoses w/o CC/MCC	0.7214	20.9	17.4	5.3
405	Pancreas, liver & shunt procedures w MCC	1.5545	35.2	29.3	29.0
406	Pancreas, liver & shunt procedures w CC	1.5545	35.2	29.3	16.0
407	Pancreas, liver & shunt procedures w/o CC/MCC	1.1417	29.0	24.2	9.2
408	Biliary tract proc except only cholecyst w or w/o c.d.e. w MCC	1.5545	35.2	29.3	23.7
409	Biliary tract proc except only cholecyst w or w/o c.d.e. w CC	1.5545	35.2	29.3	15.4
410	Biliary tract proc except only cholecyst w or w/o c.d.e. w/o CC/MCC	1.5545	35.2	29.3	10.6
411	Cholecystectomy w c.d.e. w MCC	1.1417	29.0	24.2	20.3
412	Cholecystectomy w c.d.e. w CC	1.1417	29.0	24.2	13.5
413	Cholecystectomy w c.d.e. w/o CC/MCC	1.1417	29.0	24.2	9.3
414	Cholecystectomy except by laparoscope w/o c.d.e. w MCC	1.1417	29.0	24.2	18.4
415	Cholecystectomy except by laparoscope w/o c.d.e. w CC	1.1417	29.0	24.2	11.6
416	Cholecystectomy except by laparoscope w/o c.d.e. w/o CC/MCC	1.1417	29.0	24.2	7.5
417	Laparoscopic cholecystectomy w/o c.d.e. w MCC	1.5545	35.2	29.3	13.5
418	Laparoscopic cholecystectomy w/o c.d.e. w CC	1.1417	29.0	24.2	9.0
419	Laparoscopic cholecystectomy w/o c.d.e. w/o CC/MCC	1.1417	29.0	24.2	5.0
420	Hepatobiliary diagnostic procedures w MCC	1.1417	29.0	24.2	24.2
421	Hepatobiliary diagnostic procedures w CC	0.8249	25.0	20.8	12.9
422	Hepatobiliary diagnostic procedures w/o CC/MCC	0.8249	25.0	20.8	7.3
423	Other hepatobiliary or pancreas O.R. procedures w MCC	1.1417	29.0	24.2	24.2
424	Other hepatobiliary or pancreas O.R. procedures w CC	0.8249	25.0	20.8	17.1
425	Other hepatobiliary or pancreas O.R. procedures w/o CC/MCC	0.8249	25.0	20.8	9.2
432	Cirrhosis & alcoholic hepatitis w MCC	0.6223	19.0	15.8	11.1
433	Cirrhosis & alcoholic hepatitis w CC	0.6223	19.0	15.8	7.7
434	Cirrhosis & alcoholic hepatitis w/o CC/MCC	0.5472	20.3	16.9	5.7
435	Malignancy of hepatobiliary system or pancreas w MCC	0.7422	20.2	16.8	12.6
436	Malignancy of hepatobiliary system or pancreas w CC	0.7086	19.6	16.3	9.5
437	Malignancy of hepatobiliary system or pancreas w/o CC/MCC	0.7086	19.6	16.3	7.1
438	Disorders of pancreas except malignancy w MCC	1.0057	24.3	20.3	12.5
439	Disorders of pancreas except malignancy w CC	0.8437	21.9	18.3	8.5
440	Disorders of pancreas except malignancy w/o CC/MCC	0.7204	18.8	15.7	5.9
441	Disorders of liver except malig,cirr,alc hepa w MCC	0.7588	21.8	18.2	11.3
442	Disorders of liver except malig, cirr, alc hepa w CC	0.6925	21.2	17.7	8.1
443	Disorders of liver except malig,cirr,alc hepa w/o CC/MCC	0.6925	21.2	17.7	6.0
444	Disorders of the biliary tract w MCC	0.8181	24.0	20.0	10.7
445	Disorders of the biliary tract w CC	0.6977	21.7	18.1	7.6
446	Disorders of the biliary tract w/o CC/MCC	0.5472	20.3	16.9	5.2
453	Combined anterior/posterior spinal fusion w MCC	1.5545	35.2	29.3	24.9
454	Combined anterior/posterior spinal fusion w CC	1.5545	35.2	29.3	12.7
455	Combined anterior/posterior spinal fusion w/o CC/MCC	1.5545	35.2	29.3	7.1
456	Spinal fus exc cerv w spinal curv/malig/infec or 9+ fus w MCC	1.5545	35.2	29.3	24.9
457	Spinal fus exc cerv w spinal curv/malig/infec or 9+ fus w CC	1.5545	35.2	29.3	11.6
458	Spinal fus exc cerv w spinal curv/malig/infec or 9+ fus w/o CC/MCC	1.5545	35.2	29.3	6.8
459	Spinal fusion except cervical w MCC	1.5545	35.2	29.3	14.7

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
460	Spinal fusion except cervical w/o MCC	1.5545	35.2	29.3	6.4
461	Bilateral or multiple major joint procs of lower extremity w MCC	1.5545	35.2	29.3	12.6
462	Bilateral or multiple major joint procs of lower extremity w/o MCC	1.1417	29.0	24.2	5.8
463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w MCC	1.3514	38.8	32.3	27.4
464	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w CC	1.1906	36.3	30.3	16.8
465	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w/o CC/MCC	1.0747	29.6	24.7	10.0
466	Revision of hip or knee replacement w MCC	1.5545	35.2	29.3	14.5
467	Revision of hip or knee replacement w CC	1.5545	35.2	29.3	8.0
468	Revision of hip or knee replacement w/o CC/MCC	1.5545	35.2	29.3	5.5
469	Major joint replacement or reattachment of lower extremity w MCC	1.5545	35.2	29.3	12.6
470	Major joint replacement or reattachment of lower extremity w/o MCC	1.5545	35.2	29.3	5.4
471	Cervical spinal fusion w MCC	1.5545	35.2	29.3	17.3
472	Cervical spinal fusion w CC	1.5545	35.2	29.3	7.0
473	Cervical spinal fusion w/o CC/MCC	1.5545	35.2	29.3	2.9
474	Amputation for musculoskeletal sys & conn tissue dis w MCC	1.3338	36.6	30.5	20.4
475	Amputation for musculoskeletal sys & conn tissue dis w CC	1.1390	32.7	27.3	13.9
476	Amputation for musculoskeletal sys & conn tissue dis w/o CC/MCC	1.1390	32.7	27.3	8.0
477	Biopsies of musculoskeletal system & connective tissue w MCC	1.5545	35.2	29.3	20.7
478	Biopsies of musculoskeletal system & connective tissue w CC	1.1417	29.0	24.2	11.9
479	Biopsies of musculoskeletal system & connective tissue w/o CC/MCC	1.1417	29.0	24.2	4.3
480	Hip & femur procedures except major joint w MCC	1.5545	35.2	29.3	14.1
481	Hip & femur procedures except major joint w CC	1.5545	35.2	29.3	8.4
482	Hip & femur procedures except major joint w/o CC/MCC	1.1417	29.0	24.2	6.8
483	Major joint & limb reattachment proc of upper extremity w CC/MCC	1.5545	35.2	29.3	6.6
484	Major joint & limb reattachment proc of upper extremity w/o CC/MCC	1.1417	29.0	24.2	3.6
485	Knee procedures w pdx of infection w MCC	1.5545	35.2	29.3	18.9
486	Knee procedures w pdx of infection w CC	1.1417	29.0	24.2	12.3
487	Knee procedures w pdx of infection w/o CC/MCC	1.1417	29.0	24.2	8.5
488	Knee procedures w/o pdx of infection w CC/MCC	1.5545	35.2	29.3	7.8
489	Knee procedures w/o pdx of infection w/o CC/MCC	1.5545	35.2	29.3	4.7
490	Back & neck proc exc spinal fusion w CC/MCC or disc device/neurostim	1.1417	29.0	24.2	7.6
491	Back & neck proc exc spinal fusion w/o CC/MCC	1.1417	29.0	24.2	3.4
492	Lower extrem & humer proc except hip, foot, femur w MCC	1.5545	35.2	29.3	13.6
493	Lower extrem & humer proc except hip, foot, femur w CC	1.1417	29.0	24.2	8.2
494	Lower extrem & humer proc except hip, foot, femur w/o CC/MCC	0.8249	25.0	20.8	5.1
495	Local excision & removal int fix devices exc hip & femur w MCC	1.3650	38.1	31.8	18.2
496	Local excision & removal int fix devices exc hip & femur w CC	1.1981	36.8	30.7	9.8
497	Local excision & removal int fix devices exc hip & femur w/o CC/MCC	1.1417	29.0	24.2	4.9
498	Local excision & removal int fix devices of hip & femur w CC/MCC	1.5545	35.2	29.3	13.4
499	Local excision & removal int fix devices of hip & femur w/o CC/MCC	0.7305	22.9	19.1	4.9
500	Soft tissue procedures w MCC	1.3212	35.2	29.3	18.8
501	Soft tissue procedures w CC	1.2903	30.7	25.6	9.6
502	Soft tissue procedures w/o CC/MCC	0.8249	25.0	20.8	4.5
503	Foot procedures w MCC	1.1417	29.0	24.2	14.6
504	Foot procedures w CC	0.8249	25.0	20.8	10.5
505	Foot procedures w/o CC/MCC	0.5472	20.3	16.9	5.3
506	Major thumb or joint procedures	0.7305	22.9	19.1	5.0
507	Major shoulder or elbow joint procedures w CC/MCC	0.8249	25.0	20.8	8.4
508	Major shoulder or elbow joint procedures w/o CC/MCC	0.8249	25.0	20.8	3.0
509	Arthroscopy	0.5472	20.3	16.9	4.2
510	Shoulder,elbow or forearm proc,exc major joint proc w MCC	1.1417	29.0	24.2	10.7
511	Shoulder,elbow or forearm proc,exc major joint proc w CC	1.1417	29.0	24.2	6.2
512	Shoulder,elbow or forearm proc,exc major joint proc w/o CC/MCC	0.5472	20.3	16.9	3.1
513	Hand or wrist proc, except major thumb or joint proc w CC/MCC	1.5545	35.2	29.3	8.4
514	Hand or wrist proc, except major thumb or joint proc w/o CC/MCC	0.7305	22.9	19.1	4.0
515	Other musculoskelet sys & conn tiss O.R. proc w MCC	1.3230	34.8	29.0	18.1
516	Other musculoskelet sys & conn tiss O.R. proc w CC	1.1417	29.0	24.2	10.1
517	Other musculoskelet sys & conn tiss O.R. proc w/o CC/MCC	0.8249	25.0	20.8	4.5
533	Fractures of femur w MCC	0.8249	25.0	20.8	11.2
534	Fractures of femur w/o MCC	0.7305	22.9	19.1	6.3
535	Fractures of hip & pelvis w MCC	0.7305	22.9	19.1	10.1
536	Fractures of hip & pelvis w/o MCC	0.5998	23.7	19.8	6.0
537	Sprains, strains, & dislocations of hip, pelvis & thigh w CC/MCC	0.5472	20.3	16.9	7.3
538	Sprains, strains, & dislocations of hip, pelvis & thigh w/o CC/MCC	0.5472	20.3	16.9	4.8
539	Osteomyelitis w MCC	0.9013	29.7	24.8	16.2
540	Osteomyelitis w CC	0.8107	28.7	23.9	11.3
541	Osteomyelitis w/o CC/MCC	0.7787	26.9	22.4	8.9
542	Pathological fractures & musculoskelet & conn tiss malig w MCC	0.7359	21.7	18.1	14.0

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
543	Pathological fractures & musculoskelet & conn tiss malig w CC	0.6347	21.3	17.8	9.4
544	Pathological fractures & musculoskelet & conn tiss malig w/o CC/MCC	0.5472	20.3	16.9	6.8
545	Connective tissue disorders w MCC	0.8501	23.9	19.9	14.7
546	Connective tissue disorders w CC	0.6492	20.7	17.3	8.7
547	Connective tissue disorders w/o CC/MCC	0.5472	20.3	16.9	6.1
548	Septic arthritis w MCC	0.8584	28.2	23.5	15.0
549	Septic arthritis w CC	0.7347	26.4	22.0	9.8
550	Septic arthritis w/o CC/MCC	0.6704	23.5	19.6	7.2
551	Medical back problems w MCC	0.7305	26.6	22.2	11.6
552	Medical back problems w/o MCC	0.6022	22.8	19.0	6.5
553	Bone diseases & arthropathies w MCC	0.8249	25.0	20.8	9.6
554	Bone diseases & arthropathies w/o MCC	0.4822	20.5	17.1	5.8
555	Signs & symptoms of musculoskeletal system & conn tissue w MCC	0.7305	22.9	19.1	7.8
556	Signs & symptoms of musculoskeletal system & conn tissue w/o MCC	0.7305	22.9	19.1	5.0
557	Tendonitis, myositis & bursitis w MCC	0.8177	25.9	21.6	11.0
558	Tendonitis, myositis & bursitis w/o MCC	0.6919	21.4	17.8	6.6
559	Aftercare, musculoskeletal system & connective tissue w MCC	0.7157	26.2	21.8	11.9
560	Aftercare, musculoskeletal system & connective tissue w CC	0.6393	24.6	20.5	7.5
561	Aftercare, musculoskeletal system & connective tissue w/o CC/MCC	0.5889	21.7	18.1	4.2
562	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w MCC	1.1417	29.0	24.2	10.4
563	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w/o MCC	0.5472	20.3	16.9	5.7
564	Other musculoskeletal sys & connective tissue diagnoses w MCC	0.8134	24.9	20.8	11.6
565	Other musculoskeletal sys & connective tissue diagnoses w CC	0.7382	24.8	20.7	8.1
566	Other musculoskeletal sys & connective tissue diagnoses w/o CC/MCC	0.6862	22.1	18.4	5.9
573	Skin graft &/or debrid for skn ulcer or cellulitis w MCC	1.3068	38.0	31.7	22.2
574	Skin graft &/or debrid for skn ulcer or cellulitis w CC	1.1567	37.1	30.9	14.9
575	Skin graft &/or debrid for skn ulcer or cellulitis w/o CC/MCC	0.9938	31.7	26.4	9.4
576	Skin graft &/or debrid exc for skin ulcer or cellulitis w MCC	1.5545	35.2	29.3	20.3
577	Skin graft &/or debrid exc for skin ulcer or cellulitis w CC	1.1417	29.0	24.2	9.9
578	Skin graft &/or debrid exc for skin ulcer or cellulitis w/o CC/MCC	0.7305	22.9	19.1	5.4
579	Other skin, subcut tiss & breast proc w MCC	1.2793	36.8	30.7	18.5
580	Other skin, subcut tiss & breast proc w CC	1.1001	34.8	29.0	9.0
581	Other skin, subcut tiss & breast proc w/o CC/MCC	0.9100	29.9	24.9	3.9
582	Mastectomy for malignancy w CC/MCC	1.5545	35.2	29.3	4.3
583	Mastectomy for malignancy w/o CC/MCC	1.5545	35.2	29.3	2.6
584	Breast biopsy, local excision & other breast procedures w CC/MCC	1.1417	29.0	24.2	9.5
585	Breast biopsy, local excision & other breast procedures w/o CC/MCC	1.1417	29.0	24.2	3.2
592	Skin ulcers w MCC	0.8875	27.1	22.6	14.2
593	Skin ulcers w CC	0.7877	26.8	22.3	10.0
594	Skin ulcers w/o CC/MCC	0.7342	24.3	20.3	7.7
595	Major skin disorders w MCC	0.7525	24.5	20.4	13.2
596	Major skin disorders w/o MCC	0.6155	23.8	19.8	7.6
597	Malignant breast disorders w MCC	0.8249	25.0	20.8	13.7
598	Malignant breast disorders w CC	0.7305	22.9	19.1	9.0
599	Malignant breast disorders w/o CC/MCC	0.7305	22.9	19.1	5.7
600	Non-malignant breast disorders w CC/MCC	0.7305	22.9	19.1	8.5
601	Non-malignant breast disorders w/o CC/MCC	0.7305	22.9	19.1	6.0
602	Cellulitis w MCC	0.6643	22.5	18.8	11.1
603	Cellulitis w/o MCC	0.5528	19.4	16.2	7.3
604	Trauma to the skin, subcut tiss & breast w MCC	0.8249	25.0	20.8	8.8
605	Trauma to the skin, subcut tiss & breast w/o MCC	0.5685	21.2	17.7	5.4
606	Minor skin disorders w MCC	0.8324	23.2	19.3	9.5
607	Minor skin disorders w/o MCC	0.6776	22.6	18.8	5.9
614	Adrenal & pituitary procedures w CC/MCC	1.2008	33.1	27.6	11.6
615	Adrenal & pituitary procedures w/o CC/MCC	0.7305	22.9	19.1	5.1
616	Amputat of lower limb for endocrine, nutrit, & metabol dis w MCC	1.4505	41.0	34.2	24.2
617	Amputat of lower limb for endocrine, nutrit, & metabol dis w CC	1.2414	33.3	27.8	14.5
618	Amputat of lower limb for endocrine, nutrit, & metabol dis w/o CC/MCC	0.8249	25.0	20.8	9.9
619	O.R. procedures for obesity w MCC	0.8249	25.0	20.8	14.6
620	O.R. procedures for obesity w CC	0.8249	25.0	20.8	6.3
621	O.R. procedures for obesity w/o CC/MCC	0.8249	25.0	20.8	3.6
622	Skin grafts & wound debrid for endoc, nutrit & metab dis w MCC	1.1462	35.6	29.7	21.1
623	Skin grafts & wound debrid for endoc, nutrit & metab dis w CC	1.0197	32.2	26.8	13.5
624	Skin grafts & wound debrid for endoc, nutrit & metab dis w/o CC/MCC	0.8249	25.0	20.8	9.4
625	Thyroid, parathyroid & thyroglossal procedures w MCC	1.3385	36.6	30.5	12.4
626	Thyroid, parathyroid & thyroglossal procedures w CC	1.2008	33.1	27.6	5.0
627	Thyroid, parathyroid & thyroglossal procedures w/o CC/MCC	0.7305	22.9	19.1	2.1
628	Other endocrine, nutrit & metab O.R. proc w MCC	1.3385	36.6	30.5	20.1

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
629	Other endocrine, nutrit & metab O.R. proc w CC	1.2008	33.1	27.6	14.3
630	Other endocrine, nutrit & metab O.R. proc w/o CC/MCC	0.7305	22.9	19.1	8.4
637	Diabetes w MCC	0.7726	25.8	21.5	9.8
638	Diabetes w CC	0.6757	24.0	20.0	6.7
639	Diabetes w/o CC/MCC	0.6064	20.6	17.2	4.7
640	Nutritional & misc metabolic disorders w MCC	0.7879	23.2	19.3	9.1
641	Nutritional & misc metabolic disorders w/o MCC	0.6889	22.0	18.3	6.0
642	Inborn errors of metabolism	0.7305	22.9	19.1	8.3
643	Endocrine disorders w MCC	0.7358	24.9	20.8	12.4
644	Endocrine disorders w CC	0.7358	24.9	20.8	8.6
645	Endocrine disorders w/o CC/MCC	0.5472	20.3	16.9	6.1
652	Kidney transplant	0.0000	0.0	0.0	0.0
653	Major bladder procedures w MCC	1.1417	29.0	24.2	24.2
654	Major bladder procedures w CC	0.7305	22.9	19.1	14.7
655	Major bladder procedures w/o CC/MCC	0.5472	20.3	16.9	10.0
656	Kidney & ureter procedures for neoplasm w MCC	0.8249	25.0	20.8	16.8
657	Kidney & ureter procedures forneoplasm w CC	0.8249	25.0	20.8	9.2
658	Kidney & ureter procedures for neoplasm w/o CC/MCC	0.8249	25.0	20.8	5.7
659	Kidney & ureter procedures for non-neoplasm w MCC	1.1417	29.0	24.2	18.5
660	Kidney & ureter procedures for non-neoplasm w CC	0.7305	22.9	19.1	10.6
661	Kidney & ureter procedures for non-neoplasm w/o CC/MCC	0.5472	20.3	16.9	5.1
662	Minor bladder procedures w MCC	0.8249	25.0	20.8	17.7
663	Minor bladder procedures w CC	0.8249	25.0	20.8	8.5
664	Minor bladder procedures w/o CC/MCC	1.5545	35.2	29.3	3.0
665	Prostatectomy w MCC	0.8249	25.0	20.8	20.2
666	Prostatectomy w CC	0.8249	25.0	20.8	10.7
667	Prostatectomy w/o CC/MCC	1.1417	29.0	24.2	4.0
668	Transurethral procedures w MCC	1.5545	35.2	29.3	14.4
669	Transurethral procedures w CC	1.5545	35.2	29.3	7.0
670	Transurethral procedures w/o CC/MCC	0.8249	25.0	20.8	3.7
671	Urethral procedures w CC/MCC	0.7305	22.9	19.1	9.6
672	Urethral procedures w/o CC/MCC	0.5472	20.3	16.9	3.8
673	Other kidney & urinary tract procedures w MCC	1.3255	33.6	28.0	17.6
674	Other kidney & urinary tract procedures w CC	1.2557	30.6	25.5	11.1
675	Other kidney & urinary tract procedures w/o CC/MCC	1.1417	29.0	24.2	2.7
682	Renal failure w MCC	0.8553	23.6	19.7	12.1
683	Renal failure w CC	0.7752	21.8	18.2	9.0
684	Renal failure w/o CC/MCC	0.7121	20.5	17.1	5.9
685	Admit for renal dialysis	0.7726	26.0	21.7	5.4
686	Kidney & urinary tract neoplasms w MCC	0.8933	23.6	19.7	13.2
687	Kidney & urinary tract neoplasms w CC	0.7305	22.9	19.1	8.5
688	Kidney & urinary tract neoplasms w/o CC/MCC	0.5472	20.3	16.9	5.1
689	Kidney & urinary tract infections w MCC	0.6624	22.9	19.1	9.9
690	Kidney & urinary tract infections w/o MCC	0.5655	20.2	16.8	6.6
691	Urinary stones w esw lithotripsy w CC/MCC	1.5545	35.2	29.3	6.6
692	Urinary stones w esw lithotripsy w/o CC/MCC	1.5545	35.2	29.3	3.4
693	Urinary stones w/o esw lithotripsy w MCC	0.7305	22.9	19.1	8.4
694	Urinary stones w/o esw lithotripsy w/o MCC	0.7305	22.9	19.1	3.9
695	Kidney & urinary tract signs & symptoms w MCC	0.8249	25.0	20.8	9.1
696	Kidney & urinary tract signs & symptoms w/o MCC	0.5472	20.3	16.9	5.0
697	Urethral stricture	0.5472	20.3	16.9	5.1
698	Other kidney & urinary tract diagnoses w MCC	0.7919	22.6	18.8	10.9
699	Other kidney & urinary tract diagnoses w CC	0.7293	22.1	18.4	7.7
700	Other kidney & urinary tract diagnoses w/o CC/MCC	0.6052	19.6	16.3	5.4
707	Major male pelvic procedures w CC/MCC	0.7305	22.9	19.1	6.9
708	Major male pelvic procedures w/o CC/MCC	0.5472	20.3	16.9	3.5
709	Penis procedures w CC/MCC	1.1417	29.0	24.2	10.3
710	Penis procedures w/o CC/MCC	1.1417	29.0	24.2	2.7
711	Testes procedures w CC/MCC	1.1417	29.0	24.2	13.2
712	Testes procedures w/o CC/MCC	1.1417	29.0	24.2	4.6
713	Transurethral prostatectomy w CC/MCC	1.5545	35.2	29.3	6.5
714	Transurethral prostatectomy w/o CC/MCC	0.5472	20.3	16.9	2.9
715	Other male reproductive system O.R. proc for malignancy w CC/MCC	1.5545	35.2	29.3	10.1
716	Other male reproductive system O.R. proc for malignancy w/o CC/MCC	1.5545	35.2	29.3	2.0
717	Other male reproductive system O.R. proc exc malignancy w CC/MCC	1.1417	29.0	24.2	12.4
718	Other male reproductive system O.R. proc exc malignancy w/o CC/MCC.	0.5472	20.3	16.9	4.1
722	Malignancy, male reproductive system w MCC	0.8249	25.0	20.8	12.1

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
723	Malignancy, male reproductive system w CC	0.7305	22.9	19.1	8.6
724	Malignancy, male reproductive system w/o CC/MCC	0.5472	20.3	16.9	5.3
725	Benign prostatic hypertrophy w MCC	1.1417	29.0	24.2	9.0
726	Benign prostatic hypertrophy w/o MCC	0.5472	20.3	16.9	5.5
727	Inflammation of the male reproductive system w MCC	0.7754	25.9	21.6	10.4
728	Inflammation of the male reproductive system w/o MCC	0.6172	20.8	17.3	6.2
729	Other male reproductive system diagnoses w CC/MCC	1.0319	26.6	22.2	8.4
730	Other male reproductive system diagnoses w/o CC/MCC	0.7305	22.9	19.1	4.9
734	Pelvic evisceration, rad hysterectomy & rad vulvectomy w CC/MCC	1.1417	29.0	24.2	11.8
735	Pelvic evisceration, rad hysterectomy & rad vulvectomy w/o CC/MCC	0.5472	20.3	16.9	5.3
736	Uterine & adnexa proc for ovarian or adnexal malignancy w MCC	1.1417	29.0	24.2	21.5
737	Uterine & adnexa proc for ovarian or adnexal malignancy w CC	0.8249	25.0	20.8	11.0
738	Uterine & adnexa proc for ovarian or adnexal malignancy w/o CC/MCC	0.5472	20.3	16.9	5.6
739	Uterine,adnexa proc for non-ovarian/adnexal malig w MCC	1.1417	29.0	24.2	15.9
740	Uterine,adnexa proc for non-ovarian/adnexal malig w CC	0.8249	25.0	20.8	7.7
741	Uterine,adnexa proc for non-ovarian/adnexal malig w/o CC/MCC	0.5472	20.3	16.9	4.5
742	Uterine & adnexa proc for non-malignancy w CC/MCC	0.8249	25.0	20.8	6.9
743	Uterine & adnexa proc for non-malignancy w/o CC/MCC	0.5472	20.3	16.9	3.3
744	D&C, conization, laparascopy & tubal interruption w CC/MCC	0.8249	25.0	20.8	9.3
745	D&C, conization, laparascopy & tubal interruption w/o CC/MCC	0.8249	25.0	20.8	3.8
746	Vagina, cervix & vulva procedures w CC/MCC	0.8249	25.0	20.8	6.4
747	Vagina, cervix & vulva procedures w/o CC/MCC	0.8249	25.0	20.8	2.8
748	Female reproductive system reconstructive procedures	0.8249	25.0	20.8	2.6
749	Other female reproductive system O.R. procedures w CC/MCC	0.8249	25.0	20.8	16.3
750	Other female reproductive system O.R. procedures w/o CC/MCC	0.8249	25.0	20.8	5.1
754	Malignancy, female reproductive system w MCC	1.1417	29.0	24.2	14.7
755	Malignancy, female reproductive system w CC	0.8249	25.0	20.8	9.1
756	Malignancy, female reproductive system w/o CC/MCC	0.5472	20.3	16.9	5.1
757	Infections, female reproductive system w MCC	0.8375	22.6	18.8	13.9
758	Infections, female reproductive system w CC	0.8317	27.2	22.7	9.5
759	Infections, female reproductive system w/o CC/MCC	0.5472	20.3	16.9	7.2
760	Menstrual & other female reproductive system disorders w CC/MCC	1.1417	29.0	24.2	6.0
761	Menstrual & other female reproductive system disorders w/o CC/MCC	0.5472	20.3	16.9	3.8
765	Cesarean section w CC/MCC	0.8249	25.0	20.8	7.4
766	Cesarean section w/o CC/MCC	0.7305	22.9	19.1	4.3
767	Vaginal delivery w sterilization &/or D&C	0.7305	22.9	19.1	4.1
768	Vaginal delivery w O.R. proc except steril &/or D&C	0.7305	22.9	19.1	8.9
769	Postpartum & post abortion diagnoses w O.R. procedure	0.7305	22.9	19.1	8.6
770	Abortion w D&C, aspiration curettage or hysterotomy	0.7305	22.9	19.1	3.5
774	Vaginal delivery w complicating diagnoses	0.7305	22.9	19.1	4.5
775	Vaginal delivery w/o complicating diagnoses	0.7305	22.9	19.1	3.1
776	Postpartum & post abortion diagnoses w/o O.R. procedure	1.1417	29.0	24.2	5.4
777	Ectopic pregnancy	0.7305	22.9	19.1	3.0
778	Threatened abortion	0.5472	20.3	16.9	4.2
779	Abortion w/o D&C	0.5472	20.3	16.9	3.6
780	False labor	0.5472	20.3	16.9	2.7
781	Other antepartum diagnoses w medical complications	1.1417	29.0	24.2	5.9
782	Other antepartum diagnoses w/o medical complications	0.5472	20.3	16.9	3.6
789	Neonates, died or transferred to another acute care facility	0.5472	20.3	16.9	1.5
790	Extreme immaturity or respiratory distress syndrome, neonate	0.5472	20.3	16.9	16.9
791	Prematurity w major problems	1.1417	29.0	24.2	13.3
792	Prematurity w/o major problems	0.5472	20.3	16.9	8.6
793	Full term neonate w major problems	1.1417	29.0	24.2	17.6
794	Neonate w other significant problems	1.1417	29.0	24.2	1.7
795	Normal newborn	0.5472	20.3	16.9	3.1
799	Splenectomy w MCC	1.1417	29.0	24.2	23.5
800	Splenectomy w CC	0.8249	25.0	20.8	13.0
801	Splenectomy w/o CC/MCC	0.8249	25.0	20.8	7.5
802	Other O.R. proc of the blood & blood forming organs w MCC	1.5545	35.2	29.3	21.4
803	Other O.R. proc of the blood & blood forming organs w CC	0.7305	22.9	19.1	10.8
804	Other O.R. proc of the blood & blood forming organs w/o CC/MCC	0.7305	22.9	19.1	5.2
808	Major hematol/immun diag exc sickle cell crisis & coagul w MCC	0.8009	20.7	17.3	12.8
809	Major hematol/immun diag exc sickle cell crisis & coagul w CC	0.8009	20.7	17.3	7.9
810	Major hematol/immun diag exc sickle cell crisis & coagul w/o CC/MCC	0.8009	20.7	17.3	6.2
811	Red blood cell disorders w MCC	0.6655	23.2	19.3	9.0
812	Red blood cell disorders w/o MCC	0.5699	19.5	16.3	5.9
813	Coagulation disorders	0.8015	21.5	17.9	8.3
814	Reticuloendothelial & immunity disorders w MCC	0.7474	22.6	18.8	11.7

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
815	Reticuloendothelial & immunity disorders w CC	0.7305	22.9	19.1	7.8
816	Reticuloendothelial & immunity disorders w/o CC/MCC	0.7305	22.9	19.1	5.3
820	Lymphoma & leukemia w major O.R. procedure w MCC	0.8249	25.0	20.8	20.8
821	Lymphoma & leukemia w major O.R. procedure w CC	0.8249	25.0	20.8	13.3
822	Lymphoma & leukemia w major O.R. procedure w/o CC/MCC	0.8249	25.0	20.8	5.9
823	Lymphoma & non-acute leukemia w other O.R. proc w MCC	1.1417	29.0	24.2	24.2
824	Lymphoma & non-acute leukemia w other O.R. proc w CC	1.1417	29.0	24.2	14.8
825	Lymphoma & non-acute leukemia w other O.R. proc w/o CC/MCC	0.5472	20.3	16.9	7.8
826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w MCC	0.8249	25.0	20.8	20.8
827	Myeloprolif disord or poorly diff neopl w maj O.R. proc w CC	0.8249	25.0	20.8	12.4
828	Myeloprolif disord or poorly diff neopl w maj O.R. proc w/o CC/MCC	0.8249	25.0	20.8	5.9
829	Myeloprolif disord or poorly diff neopl w other O.R. proc w CC/MCC	1.5545	35.2	29.3	17.8
830	Myeloprolif disord or poorly diff neopl w other O.R. proc w/o CC/MCC	1.5545	35.2	29.3	5.5
834	Acute leukemia w/o major O.R. procedure w MCC	1.1417	29.0	24.2	24.2
835	Acute leukemia w/o major O.R. procedure w CC	0.8249	25.0	20.8	13.5
836	Acute leukemia w/o major O.R. procedure w/o CC/MCC	0.5472	20.3	16.9	8.0
837	Chemo w acute leukemia as sdx or w high dose chemo agent w MCC	1.5545	35.2	29.3	29.3
838	Chemo w acute leukemia as sdx w CC or high dose chemo agent	0.8249	25.0	20.8	13.7
839	Chemo w acute leukemia as sdx w/o CC/MCC	1.5545	35.2	29.3	9.1
840	Lymphoma & non-acute leukemia w MCC	0.8718	20.8	17.3	16.1
841	Lymphoma & non-acute leukemia w CC	0.8026	20.1	16.8	10.7
842	Lymphoma & non-acute leukemia w/o CC/MCC	0.7305	22.9	19.1	6.9
843	Other myeloprolif dis or poorly diff neopl diag w MCC	1.1417	29.0	24.2	14.5
844	Other myeloprolif dis or poorly diff neopl diag w CC	1.1417	29.0	24.2	9.7
845	Other myeloprolif dis or poorly diff neopl diag w/o CC/MCC	1.1417	29.0	24.2	6.8
846	Chemotherapy w/o acute leukemia as secondary diagnosis w MCC	1.6788	37.4	31.2	13.8
847	Chemotherapy w/o acute leukemia as secondary diagnosis w CC	1.4350	27.6	23.0	5.0
848	Chemotherapy w/o acute leukemia as secondary diagnosis w/o CC/MCC.	0.7305	22.9	19.1	4.6
849	Radiotherapy	0.8994	23.5	19.6	9.5
853	Infectious & parasitic diseases w O.R. procedure w MCC	1.7687	38.1	31.8	27.6
854	Infectious & parasitic diseases w O.R. procedure w CC	1.4381	30.8	25.7	17.4
855	Infectious & parasitic diseases w O.R. procedure w/o CC/MCC	0.7305	22.9	19.1	12.2
856	Postoperative or post-traumatic infections w O.R. proc w MCC	1.4470	36.1	30.1	26.5
857	Postoperative or post-traumatic infections w O.R. proc w CC	1.1886	31.5	26.3	14.1
858	Postoperative or post-traumatic infections w O.R. proc w/o CC/MCC	1.1109	28.4	23.7	9.5
862	Postoperative & post-traumatic infections w MCC	0.8670	25.2	21.0	13.4
863	Postoperative & post-traumatic infections w/o MCC	0.7478	23.4	19.5	8.2
864	Fever of unknown origin	0.7305	22.9	19.1	6.4
865	Viral illness w MCC	0.7823	21.8	18.2	11.0
866	Viral illness w/o MCC	0.6431	21.2	17.7	5.4
867	Other infectious & parasitic diseases diagnoses w MCC	1.0954	23.6	19.7	16.2
868	Other infectious & parasitic diseases diagnoses w CC	0.8869	22.0	18.3	9.3
869	Other infectious & parasitic diseases diagnoses w/o CC/MCC	0.5472	20.3	16.9	6.8
870	Septicemia w MV 96+ hours	1.9505	30.5	25.4	23.6
871	Septicemia w/o MV 96+ hours w MCC	0.8299	23.5	19.6	13.0
872	Septicemia w/o MV 96+ hours w/o MCC	0.7340	21.9	18.3	9.1
876	O.R. procedure w principal diagnoses of mental illness	0.7305	22.9	19.1	19.1
880	Acute adjustment reaction & psychosocial dysfunction	0.5472	20.3	16.9	5.0
881	Depressive neuroses	0.5472	20.3	16.9	6.6
882	Neuroses except depressive	0.5472	20.3	16.9	6.9
883	Disorders of personality & impulse control	0.5472	20.3	16.9	11.8
884	Organic disturbances & mental retardation	0.4883	23.3	19.4	8.3
885	Psychoses	0.4140	23.8	19.8	12.3
886	Behavioral & developmental disorders	0.5472	20.3	16.9	9.4
887	Other mental disorder diagnoses	0.5472	20.3	16.9	7.1
894	Alcohol/drug abuse or dependence, left ama	0.5472	20.3	16.9	4.5
895	Alcohol/drug abuse or dependence w rehabilitation therapy	0.5472	20.3	16.9	16.8
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.8249	25.0	20.8	10.6
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.5472	20.3	16.9	6.4
901	Wound debridements for injuries w MCC	1.3395	35.2	29.3	23.7
902	Wound debridements for injuries w CC	1.1605	33.5	27.9	12.9
903	Wound debridements for injuries w/o CC/MCC	0.7305	22.9	19.1	7.9
904	Skin grafts for injuries w CC/MCC	1.3351	40.8	34.0	18.8
905	Skin grafts for injuries w/o CC/MCC	0.7305	22.9	19.1	7.7
906	Hand procedures for injuries	0.5472	20.3	16.9	4.9
907	Other O.R. procedures for injuries w MCC	1.6622	36.8	30.7	19.4
908	Other O.R. procedures for injuries w CC	1.3966	34.1	28.4	11.3

TABLE 3.—FY 2008 MS–LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, SHORT-STAY OUTLIER THRESHOLD AND IPPS-COMPARABLE THRESHOLD—Continued

MS–LTC–DRG	MS–DRG title	Relative weight [1]	Geometric average length of stay	Short stay outlier threshold [2]	IPPS comparable threshold [3]
909	Other O.R. procedures for injuries w/o CC/MCC	0.8249	25.0	20.8	5.7
913	Traumatic injury w MCC	0.8462	26.9	22.4	10.0
914	Traumatic injury w/o MCC	0.6448	21.9	18.3	5.3
915	Allergic reactions w MCC	0.5472	20.3	16.9	7.5
916	Allergic reactions w/o MCC	0.5472	20.3	16.9	3.2
917	Poisoning & toxic effects of drugs w MCC	0.7305	22.9	19.1	8.3
918	Poisoning & toxic effects of drugs w/o MCC	0.7305	22.9	19.1	4.2
919	Complications of treatment w MCC	0.9858	26.3	21.9	10.1
920	Complications of treatment w CC	0.8518	24.6	20.5	6.8
921	Complications of treatment w/o CC/MCC	0.7511	23.0	19.2	4.5
922	Other injury, poisoning & toxic effect diag w MCC	0.5472	20.3	16.9	10.0
923	Other injury, poisoning & toxic effect diag w/o MCC	0.5472	20.3	16.9	5.0
927	Extensive burns or full thickness burns w MV 96+ hrs w skin graft	1.5545	35.2	29.3	29.3
928	Full thickness burn w skin graft or inhal inj w CC/MCC	1.1417	29.0	24.2	24.2
929	Full thickness burn w skin graft or inhal inj w/o CC/MCC	0.7305	22.9	19.1	13.1
933	Extensive burns or full thickness burns w MV 96+ hrs w/o skin graft	1.5545	35.2	29.3	8.5
934	Full thickness burn w/o skin grft or inhal inj	0.6998	24.2	20.2	11.1
935	Non-extensive burns	0.7525	24.9	20.8	8.8
939	O.R. proc w diagnoses of other contact w health services w MCC	1.2500	33.8	28.2	18.9
940	O.R. proc w diagnoses of other contact w health services w CC	1.1066	33.8	28.2	10.5
941	O.R. proc w diagnoses of other contact w health services w/o CC/MCC	0.9719	28.8	24.0	4.8
945	Rehabilitation w CC/MCC	0.5867	22.2	18.5	16.3
946	Rehabilitation w/o CC/MCC	0.4935	18.9	15.8	11.7
947	Signs & symptoms w MCC	0.6340	22.7	18.9	7.9
948	Signs & symptoms w/o MCC	0.5642	23.4	19.5	5.3
949	Aftercare w CC/MCC	0.6693	22.1	18.4	6.1
950	Aftercare w/o CC/MCC	0.5735	18.5	15.4	5.1
951	Other factors influencing health status	1.5837	26.2	21.8	5.0
955	Craniotomy for multiple significant trauma	1.5545	35.2	29.3	21.9
956	Limb reattachment, hip & femur proc for multiple significant trauma	0.7305	22.9	19.1	14.4
957	Other O.R. procedures for multiple significant trauma w MCC	1.5545	35.2	29.3	29.1
958	Other O.R. procedures for multiple significant trauma w CC	1.1417	29.0	24.2	17.9
959	Other O.R. procedures for multiple significant trauma w/o CC/MCC	1.1417	29.0	24.2	9.9
963	Other multiple significant trauma w MCC	1.5545	35.2	29.3	16.5
964	Other multiple significant trauma w CC	0.7305	22.9	19.1	10.2
965	Other multiple significant trauma w/o CC/MCC	0.5472	20.3	16.9	6.5
969	HIV w extensive O.R. procedure w MCC	1.5545	35.2	29.3	29.3
970	HIV w extensive O.R. procedure w/o MCC	1.5545	35.2	29.3	15.8
974	HIV w major related condition w MCC	0.8908	21.9	18.3	17.5
975	HIV w major related condition w CC	0.7492	21.3	17.8	11.5
976	HIV w major related condition w/o CC/MCC	0.7382	18.0	15.0	7.7
977	HIV w or w/o other related condition	0.7305	22.9	19.1	8.3
981	Extensive O.R. procedure unrelated to principal diagnosis w MCC	2.2339	42.0	35.0	24.6
982	Extensive O.R. procedure unrelated to principal diagnosis w CC	1.8277	37.6	31.3	16.3
983	Extensive O.R. procedure unrelated to principal diagnosis w/o CC/MCC	1.1417	29.0	24.2	9.0
984	Prostatic O.R. procedure unrelated to principal diagnosis w MCC	1.5545	35.2	29.3	23.7
985	Prostatic O.R. procedure unrelated to principal diagnosis w CC	1.1417	29.0	24.2	16.6
986	Prostatic O.R. procedure unrelated to principal diagnosis w/o CC/MCC	1.1417	29.0	24.2	8.5
987	Non-extensive O.R. proc unrelated to principal diagnosis w MCC	1.6972	37.9	31.6	21.9
988	Non-extensive O.R. proc unrelated to principal diagnosis w CC	1.3386	33.2	27.7	13.2
989	Non-extensive O.R. proc unrelated to principal diagnosis w/o CC/MCC	0.8249	25.0	20.8	6.7
998	Principal diagnosis invalid as discharge diagnosis	0.0000	0.0	0.0	0.0
999	Ungroupable	0.0000	0.0	0.0	0.0

[1] Transition blended relative weights for FY 2008 determined as described in Step 7 in section II.I.4. of the preamble of the FY 2008 IPPS final rule (72 FR 47295).

[2] The ''short-stay outlier threshold'' is calculated as 5/6ths of the geometric average length of stay of the LTC–DRG (as specified at § 412.529(a), in conjunction with § 412.503).

[3] The ''IPPS-comparable threshold'' is calculated as one standard deviation from the geometric average length of stay of the same DRG under the IPPS as specified at § 412.529(c)(3)(i).

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Vol. 73, No. 19

Tuesday, January 29, 2008

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–388 2
389–810 3
811–1042 4
1043–1266 7
1267–1492 8
1493–1814 9
1815–1960 10
1961–2142 11
2143–2410 14
2411–2792 15
2793–3180 16
3181–3376 17
3377–3614 18
3615–3860 22
3861–4050 23
4051–4448 24
4449–4682 25
4683–5084 28
5085–5420 29

CFR PARTS AFFECTED DURING JANUARY

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:
7746 (See 8214) 1439
7747 (See 8214) 1439
8097 (See 8214) 1439
8214 1439
8215 3375
8216 3855
8217 4673

Executive Orders:
11858 (Amended by 13456) 4677
12919 (Revoked in part by 13456) 4677
12947 (See Notice of Jan. 18, 2008) 3859
13420 (Superseded by 13454) 1481
13454 1481
13455 4445
13456 4677

Administrative Orders:
Presidential Determinations:
No. 2008-6 of December 12, 2007 3849
No. 2008-7 of December 14, 2007 3851
Memorandums:
Memorandum of Dec. 17, 2007 1813

5 CFR

531 1493
1201 2143

Proposed Rules:
293 3410
532 3220
591 772

6 CFR

37 5272

Proposed Rules:
19 2187

7 CFR

3 1
301 5130
987 3377

Proposed Rules:
457 3411
905 5130
1160 4762

9 CFR

93 3379
94 ..... 1043, 3379
95 3379

Proposed Rules:
2 413
3 413
93 5132

10 CFR

72 17
609 1961
707 3861

Proposed Rules:
Ch. I 826
20 ..... 3221, 3812
30 3812
40 3812
50 3812
70 3812
72 3812
73 2435
430 3653

12 CFR

229 1267
303 2143
308 2143
309 2143
558 17
563 17
564 17
567 17
574 17

Proposed Rules:
226 1672
360 2364
361 420

13 CFR

101 1962

14 CFR

23 ..... 19, 389, 3385
25 27
39 ..... 29, 394, 395, 397, 400, 1044, 1046, 1048, 1052, 1055, 1269, 1815, 1816, 1964, 1968, 2793, 2795, 2797, 2799, 2801, 2803, 3615, 3618, 3620, 3621, 3623, 3625, 3863, 4051, 4053, 4055, 4057, 4059, 4061, 4063, 4066, 4683
71 ..... 1271, 3625, 4069, 4070, 4071, 4449, 4450
95 4685
97 ..... 4071, 4073, 4075

Proposed Rules:
21 3655
23 ..... 3881, 3882, 3884, 4763
39 ..... 73, 75, 77, 80, 84, 87, 830, 833, 1556, 1558, 1842, 1844, 1846, 1848, 2190, 2192, 2195, 2197, 2200, 2204, 2206, 3417, 3419, 3422, 3425, 3428, 3656, 3885, 3887, 3889, 3891, 4121, 4123, 4125, 4127,

4129, 4497
71 .....3430, 3431, 5135

15 CFR

700.....32
730.....32
740.....32
743.....32
744.....32
745.....32
746.....32
748.....32
750.....32
752.....32
754.....32
774.....32

17 CFR

210.....934, 986
228.....934
229.....934
230.....934, 986
239.....934, 986
240 .....934, 4450, 4690
249 .....934, 986, 4690
260.....934
269.....934
275.....4690
279.....4690

Proposed Rules:

3.....4499
30.....4499

18 CFR

11.....3626
37.....2984
38.....38
40.....1770
260.....1014
284.....38, 1014
385.....1014
806.....1272
808.....1272

Proposed Rules:

41.....5136
141.....5136
284.....1116, 4131

19 CFR

351.....3634

Proposed Rules:

4.....90, 1299
12.....90, 1299
18.....90, 1299
19.....2843
101.....90, 1299
103.....90, 1299
113.....90, 1299
122.....90, 1299
123.....90, 1299
141.....90, 1299
143.....1299
144.....2843
149.....90, 1299
192.....90, 1299

20 CFR

404.....1970, 2411
405.....2411
416.....1970, 2411

21 CFR

201.....402
208.....402
209.....402
510.....4077
520.....2808, 4077
522.....2808
526.....811, 3181
558.....811
1271.....3387

Proposed Rules:

101.....4765
314.....2848
601.....2848
606.....1983
610.....1983
630.....1983
640.....1983
660.....1983
814.....2848
820.....1983
1270.....1983
1309.....3432

22 CFR

22.....3867, 5087
51.....3867, 4077

23 CFR

Proposed Rules:

634.....268
655.....268

24 CFR

200.....1430
206.....1434
291.....1974
970.....3867

25 CFR

Proposed Rules:

502.....3223
542.....3224
543.....3224
546.....3223
547.....3224

26 CFR

1 .....2416, 3868, 4695
301.....1058
602.....3868

Proposed Rules:

1 .....421, 1131, 1850, 1851, 2436, 3441, 4131
31.....4765
301.....1131, 1851

28 CFR

0.....1493
27.....1493

29 CFR

1601.....3387
4022.....2420
4044.....2420

Proposed Rules:

1910.....1299
1926.....3893

30 CFR

Proposed Rules:

916.....3894
931.....1983

31 CFR

1.....1817
103.....1975

Proposed Rules:

210.....1560

32 CFR

Proposed Rules:

1701.....113

33 CFR

100.....4459
110.....4469
117 .....41, 1273, 1274, 1495, 4472, 5090, 5091, 5093, 5095
137.....2146
165 .....43, 1274, 1276, 1280, 3650, 4078, 4695, 5095

Proposed Rules:

117.....1565
165.....1133

34 CFR

462.....2306

Proposed Rules:

674.....1300
682.....1300
685.....1300
686.....1300

36 CFR

13.....3181

Proposed Rules:

7.....2436
294.....1135
1190.....2308
1191.....2308
1193.....4132
1194.....4132
1195.....2309

37 CFR

382.....4080

Proposed Rules:

201.....3898

38 CFR

3.....1075
21.....1076, 2421

Proposed Rules:

4.....428, 432

39 CFR

20.....2156

Proposed Rules:

111.....1158

40 CFR

50.....1497
51.....4420
52 .....48, 1282, 1819, 2156, 2159, 2162, 2163, 2428, 3187, 3190, 3192, 3389, 3396, 4105, 4109, 5097, 5101
60.....3568
62.....3194
63 .....226, 1738, 1916, 3568
70.....4473
72.....4312
75.....4312
81 .....2162, 2163, 3396
85.....3568
90.....3568
93.....4420
180 ...51, 52, 1503, 1508, 1512, 1517, 1976, 2809, 2812, 5104
260.....57
261.....57
271.....1077
716.....5109
1048.....3568
1065.....3568
1068.....3568

Proposed Rules:

50.....836, 1568
51.....1402
52 .....125, 836, 1162, 1175, 1570, 1851, 1853, 2209, 2210, 2436, 3224, 3225, 3226, 3446, 3447, 4133, 5152
62.....3900
63.....4136
70.....4502
81 .....1162, 1175, 3447
93.....1402
704.....2854
720.....2854
721.....2854
723.....2854

41 CFR

102-72.....2166
102-84.....2167

42 CFR

72.....3874
409.....2568
410.....2431, 2568
411.....2568
413.....2568
414 .....404, 2431, 2433, 2568
415.....2568
418.....2568
423.....2568
424.....2431, 2568
482.....2568
484.....2431, 2568
485.....2568
488.....3405

Proposed Rules:

412.....5342
422.....1301, 5270
423.....1301, 5270
424.....4503
441.....3546

43 CFR

Proposed Rules:

46.....126

44 CFR

64.....2816, 4697
65 .....2818, 2822, 2827
67.....2830, 2835

Proposed Rules:

67 .....2859, 2868, 2873, 2880, 4144, 4156
206.....2187

45 CFR

1304.....1285
1306.....1285

Proposed Rules:

1355.....2082

47 CFR

0.....813
13.....4475
64.....1297, 3197
73 .....3202, 3652, 4113, 4492, 4493
76.....1080

80.....4475
Proposed Rules:
Ch. I.....546
25.....2437
27.....2437
61.....1306
69.....1306
73 .....1576, 1577, 2211, 4513
76.....1195

48 CFR

Ch. 8 2712
25.....3409
204.....1822, 4113
207 .....1823, 1826, 4114
209.....1823, 1826
212 .....1822, 4114, 4115
217.....1826
222.....4115
225.....4113, 4115
232.....4116
234.....1823, 4117
235.....1823, 4117
237.....1826
239.....1828
244.....4113
246.....1826
252 .....1822, 1823, 1828, 1830, 4115, 4116
1516.....1978
1533.....1978
1552.....1978
Proposed Rules:
252.....1853

49 CFR

171.....4699
172.....1089, 4699
173.....4699
175.....4699
177.....4699
178.....4699
180.....4699
563.....2168
604.....2326
Proposed Rules:
192.....1307
571.....3901
574.....4157

50 CFR

17 .....1525, 3146, 4720
229.....4118, 5115
600.....406
622 .....406, 3218, 5117
648 .....411, 820, 2184, 4736, 4758
660.....4759
679 .....823, 1554, 1555, 1831, 3218, 3879, 4493, 4494, 4760, 5128
Proposed Rules:
17 .....1312, 1855, 3228, 4380
224.....1986
300.....140, 4514
600.....4514
622.....439
648.....441, 5153
697.....4514

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 JANUARY 29, 2008

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Removal of Quarantined Area:
- Mexican Fruit Fly; published 1-29-08

COMMERCE DEPARTMENT

Census Bureau

Agency information collection activities; proposals, submissions, and approvals; published 11-15-07

ENVIRONMENTAL PROTECTION AGENCY

Acephate, Fenbutatin-Oxide (Hexakis), MCPA, Pyrethrins, and Triallate; Tolerance Actions; published 1-29-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in South Florida; comments due by 2-8-08; published 12-10-07 [FR E7-23827]

Pistachios grown in California; comments due by 2-5-08; published 12-7-07 [FR 07-05989]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Mediterranean fruit fly; comments due by 2-5-08; published 12-7-07 [FR E7-23770]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Northeastern United States:
- Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures; comments due by 2-5-08; published 1-29-08 [FR E8-01559]
- Northeast Multispecies Fishery, Total Allowable Catches for Eastern Georges Bank Cod, etc.; comments due by 2-4-08; published 1-3-08 [FR E7-25580]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:
- Government equipment lease for display or demonstration; costs allowability; comments due by 2-5-08; published 12-7-07 [FR E7-23654]
- Ground and flight risk clause; comments due by 2-5-08; published 12-7-07 [FR E7-23657]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Ambient air quality standards, national—
  - Data handling conventions and computations; correcting amendments; comments due by 2-8-08; published 1-9-08 [FR 07-05954]
  - Data handling conventions and computations; correcting amendments; comments due by 2-8-08; published 1-9-08 [FR 07-05953]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NOx RACT Determinations for Merck and Co., Inc.; comments due by 2-4-08; published 1-4-08 [FR E7-25641]

Approval and Promulgation of Air Quality Implementation Plans;
- Michigan; PSD Regulations; comments due by 2-8-08; published 1-9-08 [FR E8-00186]

Approval and Promulgation of Air Quality Implementation Plans:
- Pennyslvania; Redesignation of the Allentown-Bethlehem-Easton 8-hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan, etc.; comments due by 2-6-08; published 1-7-08 [FR E8-00027]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes:
- Nevada; Wintertime Oxygenated Gasoline Rule; Vehicle Inspection and Maintenance Program, etc.; comments due by 2-6-08; published 1-7-08 [FR E7-25636]

Pesticide programs:
- Plant-incorporated protectants; procedures and requirements—
  - Bacillus thuringiensis Vip3Aa19 protein in cotton; tolerance requirement exemption; comments due by 2-4-08; published 12-6-07 [FR E7-23660]
  - Bacillus thuringiensis Vip3Aa20 protein and genetic material necessary for production in corn; tolerance requirement exemption; comments due by 2-4-08; published 12-5-07 [FR E7-23308]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Dichlorvos; comments due by 2-4-08; published 12-5-07 [FR E7-23571]

FEDERAL COMMUNICATIONS COMMISSION

Commercial Mobile Alert System; comments due by 2-4-08; published 1-3-08 [FR E7-24876]

Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments; comments due by 2-6-08; published 1-7-08 [FR E7-25214]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicaid:
- Optional State plan case management services; comments due by 2-4-08; published 12-4-07 [FR 07-05903]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Security Zone:
- Waters Surrounding U.S. Forces Vessel SBX-1, HI; comments due by 2-6-08; published 1-7-08 [FR E8-00019]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:
- Underground mines—
  - Fire extinguishers; availability; comments due by 2-4-08; published 12-20-07 [FR E7-24747]

NUCLEAR REGULATORY COMMISSION

Transportation of Radioactive Material in Quantities of Concern; comments due by 2-8-08; published 1-4-08 [FR E7-25630]

PENSION BENEFIT GUARANTY CORPORATION

Single-employer and multiemployer plans:
- Termination information disclosure; comments due by 2-4-08; published 12-5-07 [FR E7-23577]

SOCIAL SECURITY ADMINISTRATION

Organization and procedures:
- Official records and information; privacy and disclosure; comments due by 2-8-08; published 12-10-07 [FR E7-23786]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
- Takeoff/Landing Performances Assessment Aviation Rulemaking Committee; establishment; comments due by 2-4-08; published 12-6-07 [FR E7-23740]

Airworthiness Directives:
- Airbus; comments due by 2-8-08; published 1-9-08 [FR E8-00164]

Airworthiness directives:
- Boeing; comments due by 2-4-08; published 12-19-07 [FR E7-24521]

Airworthiness Directives:
- Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 2-4-08; published 1-4-08 [FR E7-25617]
- Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701, & 702), Model CL-600-2D15 (Regional Jet Series 705), etc., Airplanes; comments due by 2-4-08; published 1-4-08 [FR E7-25619]

Airworthiness directives:
- Viking Air Ltd. Model (Caribou) DHC-4 and (Caribou) DHC-4A Airplanes; comments due by 2-7-08; published 1-8-08 [FR E7-25613]

Class E airspace; comments due by 2-4-08; published 12-19-07 [FR 07-06072]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety: Polyamide-11 (PA-11) Plastic Pipe Design Pressures; comments due by 2-7-08; published 1-8-08 [FR E8-00033]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Automatic contribution arrangements; comments due by 2-6-08; published 11-8-07 [FR E7-21821]

Foreign tax credit; notification and adjustment due to foreign tax redeterminations; cross-reference; withdrawn in part; comments due by 2-5-08; published 11-7-07 [FR E7-21727]

Real estate mortgage investment conduit; commercial mortgage loans; comments due by 2-7-08; published 11-9-07 [FR E7-21987]

VETERANS AFFAIRS DEPARTMENT

Schedule for Rating Disabilities:

Evaluation of Residuals of Traumatic Brain Injury; comments due by 2-4-08; published 1-3-08 [FR E7-25522]

Evaluation of Scars; comments due by 2-4-08; published 1-3-08 [FR E7-25525]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 660/P.L. 110–177

Court Security Improvement Act of 2007 (Jan. 7, 2008; 121 Stat. 2534)

H.R. 3690/P.L. 110–178

U.S. Capitol Police and Library of Congress Police Merger Implementation Act of 2007 (Jan. 7, 2008; 121 Stat. 2546)

S. 863/P.L. 110–179

Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007 (Jan. 7, 2008; 121 Stat. 2556)

H.R. 2640/P.L. 110–180

NICS Improvement Amendments Act of 2007 (Jan. 8, 2008; 121 Stat. 2559)

Last List January 7, 2008

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